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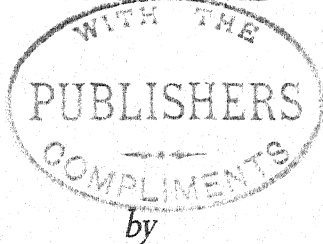




# ARMY DISTRICT COURT-MARTIAL PROCEDURE

*and*

## NOTES ON FIELD GENERAL COURT-MARTIAL PROCEDURE



*by*

**H. M. SHURLOCK**

*Major, late Royal Engineers and Royal Fusiliers; Wing Commander, Royal Air Force;  
Deputy Judge Advocate General, Southern Rhodesia; formerly Deputy Judge Advocate  
General, British Forces, Middle East; Deputy Judge Advocate General, British Air Force  
in France; and of Lincoln's Inn, Barrister-at-Law*

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*United Service Institution*

PRINTED IN GREAT BRITAIN BY  
GALE & POLDEN LIMITED  
ALDERSHOT  
1941





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## REFERENCES

- M.M.L., p. 36 ... Manual of Military Law (1929 edition), page 36.
- S. 37 (1) ... ... Army Act, Section 37, sub-section (1).
- R.P. 4 (G) ... Rules of Procedure, Rule 4, para. (G).
- K.R. 546 ... King's Regulations for the Army and the Royal Army Reserve  
(1940), para. 546.



The following are the steps which are taken normally to bring a soldier to trial by Court-Martial :—

1. The Commission of the Offence. (*See page 2.*)
2. Arrest. (*See page 10.*)
3. Appearance before Subordinate Commander. (*See page 14.*)
4. Appearance before Commanding Officer and remand for Summary of Evidence. (*See page 14.*)
5. The taking of the Summary of Evidence. (*See page 16.*)
6. Appearance before Commanding Officer after Completion of Summary of Evidence and Remand for Trial. (*See page 40.*)
7. Application by Commanding Officer to Convening Officer for Court-Martial. (*See page 44.*)
8. Convening of the Court-Martial by the Convening Officer. (*See page 61.*)
9. Trial by Court-Martial. (*See page 70.*)
10. Confirmation of Finding and Sentence. (*See page 98.*)
11. Promulgation of Finding and Sentence. (*See page 99.*)
12. Commitment for Execution of Sentence. (*See page 103.*)

## A DISTRICT COURT-MARTIAL.

### JURISDICTION.

A District Court-Martial shall not try a person subject to Military Law as an *officer*, nor award the punishment of death or penal servitude ; but, subject as aforesaid, any offence under this Act committed by a person subject to Military Law, and triable by court-martial, may be tried and punished by either a General or District Court-Martial. S. 48 (6).

Accordingly a District Court-Martial has jurisdiction to try any person subject to Military Law as a *soldier*.

### PERSONS SUBJECT TO MILITARY LAW AS SOLDIERS. (S. 176.)

The persons in this section mentioned are persons subject to Military Law as soldiers, and this Act shall apply accordingly to all the persons so specified ; that is to say,

- (1) All soldiers of the regular forces :
  - (1A) All airmen of the air force who are attached to the regular forces, subject, however, to the modifications contained in this Act :
- (2) All non-commissioned officers and men of the permanent staff of any of the auxiliary forces who are not otherwise subject to Military Law :
- (3) All non-commissioned officers and men serving in a force raised by order of His Majesty beyond the limits of the United Kingdom, India and Burma, and serving under the command of an officer of the regular forces :

Provided that nothing in this Act shall affect the application to such non-commissioned officers and men of any Act passed by the legislature of a colony :
- (4) All pensioners not otherwise subject to Military Law who are employed in military service under the orders of an officer of the regular forces :
- (5) All non-commissioned officers and men belonging to the army reserve force—
  - (a) When called out for training and exercise ; and
  - (b) When called out for duty in aid of the civil power ; and
  - (c) When called out on permanent service ; and
  - (d) When employed in military service under the orders of an officer of the regular forces :

[Paragraph (6) repealed by T.A. & M. Act, 1921.]

- (6A) All non-commissioned officers and men belonging to the territorial army—
  - (a) When they are being trained or exercised either alone or with any portion of the regular forces or otherwise ; and
  - (b) When attached to or otherwise acting as part of or with any regular forces ; and
  - (c) When embodied ; and
  - (d) When called out for actual military service, for purposes of defence in pursuance of any agreement :

[Paragraph (7) repealed by T.A. & M. Act, 1921.]

- (8) All non-commissioned officers and men belonging to the volunteer forces of the United Kingdom—
  - (a) When they are being trained or exercised with any portion of the regular forces ; and
  - (b) When they are attached to or otherwise acting as part of or with any regular forces ; and
  - (c) When their corps is on actual military service :

Provided that it shall be the duty of the Commanding Officer of any part of the volunteer force not in actual military service, when he knows that any non-commissioned officers or men belonging to that force are about to enter upon any service which will render them subject to Military Law, to provide for their being informed that they will become so subject, and for their having an opportunity of abstaining from entering on that service :
- (8A) All non-commissioned officers and men belonging to a force raised in India, Burma, or a colony when attached to or otherwise acting as part of or with any portion of the regular, reserve, or auxiliary forces in the United Kingdom :
- (9) All persons who are employed by or are in the service of any of His Majesty's troops when employed on active service, and who are not under the former provisions of this Act subject to Military Law :

- (10) All persons not otherwise subject to Military Law who are followers of or accompany His Majesty's troops, or any portion thereof, when employed on active service; subject to this qualification that, where any such persons are employed by or are followers of, or accompany any portion of, His Majesty's forces, consisting partly of His Majesty's Indian forces subject to Indian Military Law, or consisting partly of His Majesty's Burma Forces, subject to Burma Military Law, and such persons are natives of India, or as the case may be, natives of Burma, they shall be subject to Indian Military Law; or as the case may be, to Burma Military Law.
- (11) All non-commissioned officers and men belonging to a force raised in India, Burma or a colony to which this Act is, in whole or in part, applied by the law of India, Burma or the colony, at such time and subject to such adaptations, modifications, and exceptions as may be specified in such law.
- (12) Any member of a Dominion force who, by virtue of any enactment relating to the attachment of such persons, is subject to Military Law as a soldier, subject, however, to any adaptations and modifications for which provision is made by, or under, that enactment.

*Note.*—The words "non-commissioned officer" include warrant officer. S. 182.

### ROYAL MARINES.

Non-commissioned officers and men of the Royal Marines are subject to Military Law as soldiers when not borne on the books of any ship commissioned by His Majesty. S. 179, S. 190 (8).

### COLONIAL TROOPS.

Where any force of volunteers, or of militia, or any other force, is raised in India, Burma, or in a colony, any law of India, Burma or the colony may extend to the officers, non-commissioned officers and men belonging to such force, whether within or without the limits of India or the colony; and any such law may apply, in relation to such force and to any officers, non-commissioned officers, and men thereof, all or any of the provisions of this Act, subject to such adaptations, modifications, and exceptions as may be specified in such law, and where so applied this Act shall have effect in relation to such force subject to such adaptations, modifications, and exceptions as aforesaid; and where any such force is serving with part of His Majesty's regular forces, then so far as the law of India, Burma or the colony has not provided for the government and discipline of such force, this Act and any other Act for the time being amending the same shall, subject to such exceptions and modifications as may be specified in the general orders of the officer, whether military or air force, not below the rank of colonel or group captain, commanding His Majesty's forces with which such force is serving, apply to the officers, non-commissioned officers, and men of such force, in like manner as they apply to the officers, non-commissioned officers and men of the regular forces.

This section shall not apply to any officer belonging to any such force when attached to or doing duty with, or to any non-commissioned officer, or man belonging to any such force when attached to or otherwise acting as part of or with any portion of the regular, reserve, or auxiliary forces in the United Kingdom. S. 177.

## COMMISSION OF AN OFFENCE.

The following sets out the statements of offences in respect of military service.

### OFFENCES IN RESPECT OF MILITARY SERVICE.

#### Section 4.

- (1) Shamefully { abandoning { a garrison.  
delivering up { a place.  
                  { a post.  
                  { a guard.
- Using { compel { a governor  
means to { induce { a com-  
                  { [or other { manding  
                  { person] { officer  
                  { } shamefully { abandon { a garrison,  
                  { to { deliver up { a place,  
                  { } { a post,  
                  { } { a guard, } which it was his  
                  { } { } duty to defend.
- (2) Shamefully casting away his { arms  
  { ammunition } in the presence of the enemy.  
  { tools
- (3) Treacherously { holding correspondence with } the enemy.  
                          { giving intelligence to }  
Treacherously { sending a flag of truce to the enemy.  
Through cowardice }
- (4) Assisting the enemy with { arms.  
  { ammunition.  
  { supplies.
- Knowingly { harbouring } an enemy not being a prisoner.  
                  { protecting }
- (5) Having been made a prisoner of war, voluntarily { serving with } the enemy.  
  { aiding }
- (6) Knowingly doing, when on active { His Majesty's forces.  
service, an act calculated to { forces co-operating with His Majesty's forces.  
imperil the success of { part of His Majesty's forces.  
  { part of forces co-operating with His Majesty's forces.



### Section 5.

- (1) When on active service, without orders from his superior officer, { in order to secure prisoners.  
in order to secure horses.  
on pretence of taking wounded men to the rear. } leaving the ranks
  - (2) When on active service wilfully { destroying } property without orders from his superior officer.  
damaging
  - (3) When on active service, being taken prisoner { by want of due precaution.  
through disobedience of orders.  
through wilful neglect of duty. }
- After being taken prisoner when on active service, failing to rejoin His Majesty's service when able to rejoin the same.
- (4) When on active service, without due authority { holding correspondence with } the enemy.  
giving intelligence to  
sending a flag of truce to
  - (5) When on active service { by word of mouth } spreading reports calculated to { alarm.  
in writing } create unnecessary { despondency.  
by signals }  
[otherwise]
  - (6) When on active service { in action } using words calculated to create { alarm.  
previously to going into action } { despondency.
  - (7) When on active service { misbehaving } before the enemy in such manner as  
inducing others to misbehave } to show cowardice.

### Section 6.

- (1) (i) [When on active service,] treacherously { parole } to a person not entitled to receive it.  
making known the { watchword }  
countersign
  - [When on active service,] treacherously { parole } different from what he received.  
giving a { watchword }  
countersign
  - (2) (a) [When on active service,] leaving his Commanding Officer to go in search of plunder.  
(b) [When on active service,] forcing a safeguard.  
(c) [When on active service,] { forcing } a sentinel.  
striking
  - (d) [When on active service,] breaking into a { house } in search of plunder.  
[other place]
  - (e) When a soldier acting as sentinel { sleeping on his post.  
[on active service] } being drunk on his post.
  - (f) [When on active service,] { guard } without orders from his superior officer.  
leaving his { picquet }  
patrol  
post
  - (g) [When on active service,] by { discharging firearms } intentionally occasioning { in action.  
drawing swords } false alarms { on the march.  
beating drums } in the field.  
making signals { [elsewhere].  
using words }  
[any means whatever]
  - (h) When a soldier acting as sentinel [on active service] leaving his post before he was regularly relieved.
  - (3) (a) By { discharging firearms } negligently occasioning false alarms { in action.  
drawing swords } on the march.  
beating drums { in the field.  
making signals } [elsewhere].  
using words  
[any means whatever]
  - (b) Making known the { parole } to a person not entitled to receive it.  
watchword  
countersign
- Without good and sufficient cause giving a { parole } different from what he received.  
watchword  
countersign
- (c) Impeding { the provost-marshal.  
an assistant provost-marshal.  
an officer } legally { under } the provost-marshal.  
a non-commissioned officer } exercising authority on behalf of  
[other person]
- When called on, refusing to assist in the execution of his duty { the provost-marshal.  
an assistant provost-marshal.  
an officer } legally { under } the provost-marshal.  
a non-commissioned officer } exercising authority on behalf of  
[other person]
- (d) Doing violence to a person bringing { provisions } to the forces.  
supplies
  - Committing an offence { property } of an inhabitant of { the country in which he was serving.  
against the } person of a resident in
  - (e) Irregularly { detaining } corps { contrary to orders } provisions { proceeding to  
appropriating } battalion } issued in that } supplies } the forces.  
to his own } detachment } respect

Section 7.

- (1) { Causing  
Conspiring with other  
persons to cause } a mutiny  
sedition } in His Majesty's { military forces.  
naval forces.  
air forces.
- (2) Endeavouring to seduce a person { military forces  
naval forces  
air forces } from allegiance to His Majesty.  
in His Majesty's
- Endeavouring to persuade a { military forces  
naval forces  
air forces } to join in { a mutiny.  
sedition.  
person in His Majesty's
- (3) Joining in a mutiny  
sedition } in His Majesty's { military forces.  
naval forces.  
air forces.
- Being present at and not using his { a mutiny } in His Majesty's { military forces.  
utmost endeavours to suppress { sedition } naval forces.  
air forces.
- (4) After coming to { an actual mutiny  
an intended mutiny } in His { military forces  
naval forces } failing to inform without  
the knowledge of { actual sedition  
intended sedition } Majesty's { air forces } delay his Commanding  
Officer of the same.

Section 8.

- (1) { Striking  
Using violence to  
Offering violence to } his superior officer, being in the execution of his office.
- (2) [When on active service,] { striking  
using violence to  
offering violence to } his superior officer.
- [When on active service,] using { threatening  
insubordinate } language to his superior officer.

Section 9.

- (1) Disobeying, in such manner as to show a wilful defiance of authority, a lawful command given personally by his superior officer in the execution of his office.
- (2) [When on active service,] disobeying a lawful command given by his superior officer.

Section 10.

- (1) When concerned in a { quarrel  
fray  
disorder } { refusing to obey  
striking  
using violence to  
offering violence to } an officer who ordered him into arrest.
- (2) { Striking  
Using violence to  
Offering violence to } a person in whose custody he was placed.
- (3) Resisting an escort whose duty it was { to apprehend him.  
to have him in charge.
- (4) Breaking out of { barracks.  
camp.  
quarters.

Section 11.

Neglecting to obey { general  
garrison  
[other] } orders.

DESERTION, FRAUDULENT ENLISTMENT, AND ABSENCE WITHOUT LEAVE.

Section 12.

- (1) (a) { [When on active service]  
[When under orders for  
active service] } deserting His Majesty's service.  
attempting to desert His Majesty's service.
- (b) { [When on active service]  
[When under orders for  
active service] } persuading  
endeavouring to persuade } a person subject to Military Law to  
procuring  
attempting to procure } desert from His Majesty's service.

Section 13.

- (1) (a) or (b) Fraudulent enlistment.

Section 14.

- (1) Assisting a person subject to Military Law to desert His Majesty's service.
- (2) When cog-  
nizant of { the desertion  
the intended  
desertion } { of a person,  
subject to  
Military  
Law not  
forthwith } giving notice to his Commanding Officer.  
taking some  
steps in his  
power to  
cause the } deserter  
intending deserter } to be  
apprehended.

### Section 15.

- (1) Absenting himself without leave.
- (2) Failing to appear at the place of { parade  
rendezvous } appointed by his Commanding Officer.  
Without leave, before he was re- { parade  
lieved, going from the place of { rendezvous } appointed by his Commanding Officer.  
Without urgent necessity, quitting the ranks.
- (3) { When in camp  
When in garrison  
When [elsewhere] } being { beyond the limits fixed by { general  
found in a place prohibited by { garrison  
[other] } orders, without a pass or written leave from his Commanding Officer.
- (4) Without leave from his Commanding Officer or due cause absenting himself from school when duly ordered to attend there.

### DISGRACEFUL CONDUCT.

#### Section 16.

Behaving in a scandalous manner, unbecoming the character of an officer and a gentleman.

#### Section 17.

- { When charged with { the care  
When concerned in { the distri-  
bution } of public property } stealing  
of regimental property } fraudulently misapplying } the same.  
of garrison property } embezzling
- { When charged with { the care  
When concerned in { the distri-  
bution } of public property } being concerned } stealing  
of regimental property } in the } fraudulent mis-  
of garrison property } conniving } application } thereof.  
at the } embezzlement }
- { When charged with } the care { of public  
When concerned in } the distribution { of regimental  
of garrison } property wilfully damaging the same.

#### Section 18.

- (1) Malingering.  
{ Feigning } disease.  
{ Producing } infirmity.
- (2) Wilfully { maiming { himself  
injuring { a person subject } with intent { himself  
to Military Law } thereby to } that person } unfit for service.  
Causing himself to be { maimed { by some person, with intent thereby to render himself unfit for  
injured } service.
- (3) { Being wilfully guilty of misconduct  
by means of which misconduct } he { produced  
Wilfully disobeying orders by means of } which disobedience { aggravated  
disease.  
infirmary.
- (4) { Stealing  
Embezzling  
Fraudulently  
misapplying } property belonging to { a person subject to Military Law.  
a regimental band.  
a regimental mess.  
a garrison mess.  
a regimental institution.  
a garrison institution.  
the Navy, Army and Air Force Institutes.  
public property.
- Receiving  
knowing it to } stolen { a person subject to Military Law.  
have been } embezzled { a regimental band.  
a regimental mess.  
a garrison mess.  
a regimental institution.  
a garrison institution.  
the Navy, Army and Air Force Institutes.  
public property.
- (5) Such an offence of a fraudulent nature as is mentioned in paragraph five of section eighteen of the Army Act.  
Disgraceful conduct of { a cruel  
an indecent  
an unnatural } kind.

### DRUNKENNESS.

#### Section 19.

Drunkenness.

### OFFENCES IN RELATION TO PERSONS IN CUSTODY.

#### Section 20.

- (1) When in command of a { guard  
picquet  
patrol  
post } [wilfully] releasing without proper authority a person committed to his charge.
- (2) { Wilfully  
Without reasonable excuse } allowing to escape a person { committed to his charge.  
whom it was his duty to } { keep.  
guard.



### Section 21.

- (1) Unnecessarily detaining a person in { arrest  
confinement } without bringing him to trial.  
Unnecessarily failing to bring a person's case before the proper authority for investigation.
- (2) After having committed a person to the custody of { an officer  
a non-commissioned officer  
a provost-marshal  
an assistant provost-marshal } failing without reasonable cause to deliver { at the time of the committal or as soon as practicable within 24 hours after such committal } to the officer to the non-commissioned officer to the provost-marshal to the assistant provost-marshal into whose custody the person was committed, an account in writing signed by himself of the offence with which the person so committed was charged.
- (3) When in command of a guard failing { as soon as he was relieved from his { guard } duty within 24 hours after a person was committed to his charge } to give in writing to the officer to whom he was ordered to report { that person's name. that person's offence so far as known to him. the name of the officer of the [person] of the rank of the [person] the written account given him by the officer [person] } by whom the person was charged. { by whom the person was committed to his custody. }

### Section 22.

- When in { arrest  
confinement  
prison  
[other lawful custody] } escaping. attempting to escape.

## OFFENCES IN RELATION TO PROPERTY.

### Section 23.

- (1) Conniving at the exaction of an exorbitant price for a { house  
stall } let to a sutler.
- (2) { Laying a duty upon  
Taking a fee in respect of  
Taking an advantage in respect of  
Being interested in } { the sale of provisions  
the sale of merchandise } brought into { a garrison  
a camp  
a station  
a barrack  
a [place] } { in which he had } command. authority.
- { the sale of provisions  
the purchase of stores } for the use of some of His Majesty's forces.

### Section 24.

- (1) { Making away with by  
Being concerned in making away with by } { pawning  
selling  
destruction  
[otherwise] } { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.  
public property issued to him for his use.  
public property entrusted to his care for military purposes. }
- (2) Losing by neglect { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.  
public property issued to him for his use.  
public property entrusted to his care for military purposes. }
- (3) Making away with by { pawning  
selling  
destruction  
[otherwise] } { a military  
an air force } decoration granted him.
- (4) Wilfully injuring { his arms.  
his ammunition.  
his equipments.  
his instruments.  
his clothing.  
his regimental necessaries.  
a horse of which he had charge.  
public property issued to him for his use.  
public property entrusted to his care for military purposes.  
a military decoration granted him.  
an air force decoration granted him.  
property belonging to { a comrade.  
an officer.  
a regimental band.  
a regimental mess.  
a garrison mess.  
a regimental institution.  
a garrison institution.  
the Navy, Army and Air Force Institutes.  
public property }
- (5) Ill-treating a { horse  
[other animal] } used in the public service.



## OFFENCES IN RELATION TO FALSE DOCUMENTS AND STATEMENTS.

### Section 25.

- (1) In a {  
report  
return  
muster roll  
pay list  
certificate  
book  
route  
[other  
document]} made by him  
signed by him  
of the contents  
of which it was  
his duty to  
ascertain the  
accuracy } knowingly making  
being privy to the  
making of { a false statement.  
a fraudulent statement.  
an omission with intent to defraud.
- (2) { Knowingly, and } injure some person { suppressing  
with intent to } defraud { making away with } a document which it } preserve.  
{ } { defacing } was his duty to } produce.  
{ } { altering }
- (3) Where it was his official duty to make a declaration respecting a matter knowingly making a false declaration.

### Section 26.

- (1) When signing a document relating to {  
pay  
arms  
ammunition  
equipments  
clothing  
regimental  
necessaries  
provisions  
furniture  
bedding  
blankets  
sheets  
utensils  
forage  
stores } leaving in blank a material part for which  
his signature was a voucher.
- (2) { Refusing to  
By culpable neglect omitting to } make { a report  
send { a return } which it was his duty to { make.  
send.

### Section 27.

- (1) Making a false accusation against { an officer  
a soldier } knowing such accusation to be false.
- (2) In making a complaint where he { knowingly making a false statement { an officer.  
thought himself wronged - affecting the character of { a soldier.  
knowingly and wilfully suppressing { material facts.  
a material fact.
- (3) Falsely stating to his Commanding Officer that he had {  
been guilty of { desertion.  
fraudulent enlistment.  
desertion from the navy.  
desertion from the air force.  
served in and been { a portion of the regular forces.  
discharged from { a portion of the reserve forces.  
the navy.  
the air force.
- (4) Making a wilfully false statement to a { military officer  
justice } in respect of the prolongation of furlough.

## OFFENCES IN RELATION TO COURTS-MARTIAL.

### Section 28.

- (1) When duly { summoned  
ordered to attend } as a witness before a Court-Martial, making default in attending.
- (2) Refusing to { take an oath legally required by a Court-Martial to be taken.  
make a solemn declaration legally required by a Court-Martial to be made.
- (3) Refusing to produce a { power  
document in his } control } legally required by a Court-Martial to be produced by him.
- (4) Refusing when a witness to answer a question to which a Court-Martial legally required an answer.
- (5) Being guilty of contempt of a { using { insulting  
Court-Martial by { causing { threatening } language.  
an interruption } in the proceedings of such Court.  
a disturbance }

### Section 29.

- Wilfully giving false { oath  
evidence when ex- } solemn  
amined on } declaration } before { a Court-Martial.  
a Court } authorised by the Army Act to  
an officer } administer an oath.

Section 30.

- (1) Being guilty of ill-treatment by { violence extortion making disturbances in billets } of the occupier of a { person horse } was billeted.
- (2) { Refusing Neglecting } { on complaint and proof of the ill-treatment by } { violence by extortion making disturbances in billets by } { an officer a soldier } { under his command of the occupier of a house in which a { person horse } was billeted to cause compensation to be made for the same.
- (3) Failing to comply with the provisions of the Army Act with respect to the { payment of the just demands of a person on whom making up and transmitting of an account of the money due to a person on whom } { he his horse } { an officer a soldier } { under his command } { the horse of an officer a soldier } { under his command } { had been billeted.
- (4) Wilfully demanding billets which were not actually required { person horse } entitled to be billeted.
- (5) { Taking Knowingly suffering to be taken } from a { money a reward } for { excusing relieving } a person from { his liability a part of his liability } in respect of the { billeting quartering } of { officers. soldiers. horses.
- (6) { Offering Using } menace to { a constable a civil officer } to make him give billets contrary to the Army Act. { Using Offering } { menace to a constable a civil officer } { tending to deter to discourage } { him from performing part of } { his duty under the provisions of the Army Act relating to billeting.
- (7) { Using Offering } { menace to compulsion on } { a person tending to oblige him } { to receive without his consent, a { person horse } not duly billeted upon him } { the provisions of the Army Act relating to billeting.

OFFENCES IN RELATION TO IMPRESSMENT OF CARRIAGES.

Section 31.

- (1) Wilfully demanding { carriages animals vessels food forage stores } which were not actually required for purposes authorised by the Army Act.
- (2) Failing to comply with the provisions of the Army Act, relating to the impressment of carriages, as regards { the payment of sums due for carriages. the weighing of the load.
- (3) Constraining { a carriage an animal a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages } { to travel against the will of the person in charge thereof, beyond the proper distance. to carry against the will of the person in charge thereof, a greater weight than he was required by the said provisions to carry.
- (4) Failing to discharge as speedily as practicable { a carriage an animal a vessel } furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.
- (5) { Compelling Permitting the compelling of } { a person in charge of } { a carriage an animal a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages to take thereon } { baggage stores } { not entitled to be carried. } { who was not sick. } { soldier servant woman. person.
- (6) { Ill-treating Permitting the ill-treatment of } { a person in charge of } { a carriage an animal a vessel } { furnished in pursuance of the provisions of the Army Act relating to the impressment of carriages.
- (7) { Using Offering } { menace to compulsion on } { a constable } { to make him provide } { a carriage an animal a vessel food forage stores } { which he was not bound in pursuance of the provisions of the Army Act relating to the impressment of carriages, to provide. } { tending to } { deter to discourage } { him from performing a part of } { his duty in relation to the providing of } { carriages. animals. vessels. food. forage. stores.
- (8) Forcing { a carriage an animal a vessel food forage stores } from the owner thereof.

# OFFENCES IN RELATION TO ENLISTMENT.

## Section 32.

- (1) After having been { discharged with disgrace from a part of His Majesty's military forces } enlisting in the regular forces without declaring the circumstances of his discharge. dismissal.

## Section 33.

Making a wilfully false answer to a question set forth in the attestation paper which was put to him by, or by direction of, the justice before whom he appeared for the purpose of being attested.

## Section 34.

- (1) Being concerned in the enlistment for service in the regular forces of a man when he { knew had reasonable cause to believe } such man to be so circumstanced that by enlisting he committed an offence against the Army Act.
- (2) Wilfully contravening { the enactments of the Army Act } in a matter relating to the enlistment of soldiers of the regular forces.

## MISCELLANEOUS MILITARY OFFENCES.

## Section 35.

Using { traitorous disloyal } words regarding the Sovereign.

## Section 36.

Without due authority { verbally in writing by signal [otherwise] } disclosing { the numbers of the position of some forces some magazines of the forces some stores of the forces } at such time and in such manner as to have produced injurious effects to His Majesty's service.

## Section 37.

- (1) { Striking Ill-treating } a soldier.
- (2) After receiving the pay of { an officer a soldier } unlawfully detaining unlawfully refusing to pay } the same when due.

## Section 38.

- (1) { Fighting Promoting Being concerned in Conniving at fighting } a duel.
- (2) Attempting to commit suicide.

## Section 39.

On application being { neglecting refusing } { to deliver over to the civil magistrate to assist in the lawful apprehension of } an officer a soldier } accused of an offence punishable by a civil Court.

## Section 40.

{ An act Conduct Disorder Neglect } to the prejudice of good order and military discipline. (See notes at head of page 10.)

## Section 41.

- (1-4) { When on active service In Gibraltar } committing the offence of { treason. murder. manslaughter. treason-felony. rape. }
- (5) Committing a civil offence, that is to say [state the offence according to English law, either using legal terms, e.g., arson, larceny, larceny from the person, assault, robbery with violence, &c., or, in ordinary language, e.g., stealing, maliciously injuring property, setting fire to a house, &c.]. (See notes at head of page 10.)

## Section 155.

- (1-3) { Negotiating Acting as agent for Aiding Conniving at } { the { sale purchase } of a commission in His Majesty's regular forces. the { giving receiving } of a valuable consideration in respect of a promotion in retirement from employment in } His Majesty's regular forces.
- { any exchange made in manner not authorised by regulations made in pursuance of the Regimental Exchanges Act, 1875, and in respect of which a } sum of money { was } given. received.



*Charges under S. 40.*

(a) No charge should be framed under this section for a purely military offence or attempted offence in respect of which a specific provision is made under some other section of the Army Act.

(b) The charge should be "An Act," if the offence were the doing of some specific act; "Neglect" in respect of an omission; and "Conduct" when the offence is words spoken or other behaviour not consisting of a specific act.

(c) Neglect must be wilful and culpable.

(d) Attempts to commit military offences not specifically provided for in the Army Act should be charged under this section.

The attempts which are specifically provided for in the Army Act are :—

(1) Attempting to desert. S. 12.

(2) Attempting to escape. S. 22.

(3) Attempting to commit suicide. S. 38.

*Charges under S. 41.*

This section in effect gives absolute jurisdiction to a Court-Martial to try any person subject to Military Law for any civil offence, except that a Court-Martial cannot try the offences of treason, murder, manslaughter, treason-felony, or rape, if committed in the United Kingdom or anywhere else in the King's Dominions, except Gibraltar, within 100 miles from a place where the offender can be tried by a civil Court, unless the offence is committed on active service outside the United Kingdom.

## ARREST.

Arrest should be effected :—

(a) On the commission or discovery of any serious offence.

(b) On disobeying or resisting the authority of an officer, a warrant officer or non-commissioned officer. K.R. 559.

(c) In cases of drunkenness.

### HOW EFFECTED (Warrant Officers, Non-Commissioned Officers and Soldiers).

An officer may order into military custody an officer of inferior rank or any soldier. S. 45 (3).

A non-commissioned officer may order into military custody any soldier. S. 45 (3).

*Note.*—"Non-commissioned" officer includes a warrant officer. S. 182.

"Soldier" includes warrant officer and non-commissioned officer. S. 190 (6).

### PROVISIONS FOR CLOSE ARREST.

*Warrant Officer.*—A warrant officer will be placed in charge of an escort consisting of another warrant officer of the same rank if possible. He will not leave his quarters or tent except to take such exercise, under supervision, as the medical officer considers necessary. He will not wear sash, sword, belt or spurs. K.R. 564.

*Non-Commissioned Officer.*—An N.C.O. will be placed in charge of an escort of equal rank and shall not leave his quarters or tent except to take such exercise as the medical officer considers necessary. K.R. 565 and K.R. 564.

*Soldiers* will be placed or confined in charge of a guard, picquet, patrol, sentry or provost-marshal; will be searched and deprived of knives and other weapons; will be allowed bedding except in the case of drunkenness and will take sufficient exercise under supervision for the preservation of health (K.R. 565), and will not bear arms except in emergency (K.R. 566).

### PROVISIONS FOR OPEN ARREST.

*Warrant Officer.*—A warrant officer will not appear outside his tent or quarters dressed otherwise than in uniform; will not appear at any place of amusement or entertainment or public assemblies; will take exercise only at stated intervals and within defined limits; will not wear sash, sword, belt or spurs. K.R. 564.

*Non-Commissioned Officers.*—The same restrictions as for warrant officers. K.R. 565.

*Soldiers.*—A soldier will not quit barracks (except on duty or with special permission); will attend all parades. K.R. 566.

## NOTES.

*Close arrest should normally only be made when :—*

(a) The offence is accompanied by drunkenness. K.R. 560 (a).

(b) The offence is accompanied by violence. K.R. 559.

(c) The offence is accompanied by insubordination. K.R. 559.

(d) The offence is one of disobedience or of resisting authority. K.R. 559 (e).

(e) It is necessary for the offender's safe custody. K.R. 559 (d).

(f) It is necessary for the maintenance of discipline. K.R. 559 (d).



*Arrest for drunkenness.*

The offender should be :—

- (a) Placed in close arrest, alone, if possible.
- (b) He may be deprived of his boots and bedding, except in cold weather and he is likely to suffer as a result.
- (c) He should be visited by an N.C.O. of the guard and an escort at least every two hours.
- (d) If he appears ill a medical officer shall be sent for forthwith. *K.R. 560.*

## THE INTERROGATION OF OFFENDERS.

The Judges of the High Court have laid down certain rules regarding the interrogation of suspected persons, and the manner in which statements from such persons may be taken. These rules apply equally to military offenders, and persons taken into military custody.

These rules are as follows :—

- (1) Where a police officer (or military authority) is endeavouring to discover the author of a crime, there is no objection to his putting questions in respect thereof to any person or persons, whether suspected or not, from whom he thinks that useful information can be obtained.
- (2) Whenever a police officer (or military authority) has made up his mind to charge a person with a crime he should first caution such person before asking any questions or any further questions, as the case may be.
- (3) Persons in custody should not be questioned without the usual caution being first administered.
- (4) If the prisoner wishes to volunteer any statement, the usual caution should be administered.

It is desirable that the last two words in the usual caution should be omitted, and that the caution should end with the words "to be given in evidence."
- (5) The caution to be administered to a prisoner when he is formally charged should therefore be in the following words :—

"Do you wish to say anything in answer to the charge? You are not obliged to say anything unless you wish to do so, but whatever you say will be taken down in writing and may be given in evidence."

Care should be taken to avoid any suggestion that his answers can only be used in evidence against him, as this may prevent an innocent person making a statement which might assist to clear him of the charge.
- (6) A statement made by a person before there is time to caution him is not rendered inadmissible in evidence merely by reason of no caution having been given, but in such a case he should be cautioned as soon as possible.
- (7) A prisoner making a voluntary statement must not be cross-examined and no questions put to him about it except for the purpose of removing ambiguity in what he has actually said. For instance, if he has mentioned an hour without saying it was morning or evening, or has given a day of the week and day of the month which do not agree, or has not made it clear to what individual or what place he intended to refer in some part of his statement, he may be questioned sufficiently to clear up the point.
- (8) When two or more persons are charged with the same offence, and statements are taken separately from the persons charged, the police should not read these statements to the other persons charged, but each of such persons should be furnished by the police with a copy of such statements, and nothing should be said or done by the police to invite a reply. If the person charged desires to make a statement in reply, the usual caution should be administered.
- (9) Any statement made in accordance with the above rules should, whenever possible, be taken down in writing and signed by the person making it after it has been read to him and he has been invited to make any corrections he may wish.

[*M.M.L.*, p. 91.]

## INVESTIGATION OF CHARGES WITHIN SPECIFIED TIME.

### *R.P. 2.*

Every Commanding Officer will take care that a person under his command, when charged with an offence, is not detained in custody for more than forty-eight hours after the committal of that person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him to be impracticable with due regard to the public service. Every case of a person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported by the Commanding Officer to the general or other officer to whom application would be made to convene a Court-Martial for the trial of the person charged.

### NOTES.

1. A Commanding Officer who unnecessarily detains a person in arrest or confinement renders himself liable to a charge under S. 21.
2. The investigation must be commenced within the specified time even if not completed.
3. Sunday, Good Friday and Christmas Day shall not reckon in calculation of the forty-eight hours. *R.P. 135 (A).*
4. The report should normally be made in writing. *R.P. 135 (B).* Writing may be dispensed with on account of military exigencies or otherwise, *i.e.*, it could be made orally or by signal or telephone. *R.P. 135 (B).*

## DELAY IN INVESTIGATION OF CHARGES REPORT.

### PRECEDENT.

From 1st West Surrey Regt.

To 408th Infantry Brigade

1234567 Private T. Atkins - 1st West Surrey Regt.

The above-mentioned was placed in military  
custody at.....on.....  
on the following charges

\* As  
applicable.

( Stealing a bicycle ) \*

( Desertion ) \*

The investigation of the case has not been  
commenced within 48 hours for the following  
reasons :—

.....  
O.C., 1st West Surrey Regt.

Place.....

Date .....



## APPEARANCE OF ACCUSED BEFORE SUBORDINATE COMMANDER.

Charges against a warrant officer, non-commissioned officer or a private soldier will, in the first instance, be investigated by the company commander. *M.M.L.*, p. 35.

The investigation should be commenced within forty-eight hours. *R.P.* 2.

The case of a warrant officer or non-commissioned officer will invariably be referred to the Commanding Officer. Offences against soldiers, with the exception of minor offences, will be referred to the Commanding Officer. *M.M.L.*, p. 35.

For Procedure, see below.

## APPEARANCE OF ACCUSED BEFORE COMMANDING OFFICER.

### PROCEDURE.

(1) The accused, deprived of his cap and any other missiles, should be marched before the officer with an escort.

(2) The officer should read out the charge and ask the accused if he is the person referred to on the charge sheet or guard report.

(3) The accused should be asked whether he requires the evidence given on oath. *S. 46 (6) and note 12.*

(4) The witnesses for the prosecution give their evidence.

(5) The accused may cross-examine each witness for the prosecution.

(6) The accused may give evidence on oath or make an unsworn statement in his defence.

(7) The accused may call such witnesses as he wishes in his defence.

(8) The officer, having considered the evidence, should adopt one of the following courses :—

(a) If the evidence is doubtful and the case is trivial, the Commanding Officer may dismiss the case. *R.P.* 4 (A).

(b) If the offence and the accused are within his power to deal with, he may dispose of the case summarily and award a suitable punishment. *R.P.* 4 (B) *K.R.* 573.

(c) Refer the case to a superior authority. *R.P.* 4 (B).

(d) Adjourn the case for the evidence to be taken down in writing—in other words, for a summary of evidence to be taken. *R.P.* 4 (B).



## SUMMARY OF EVIDENCE.

### Objects.

1. To enable the Commanding Officer to determine whether there is a *prima facie* case against the accused and whether he should remand the accused for trial.

2. To inform the Convening Officer of the nature of the case and to enable him to decide whether the case should be tried by Court-Martial and to assist him in deciding whether he should convene a general or district Court-Martial.

and, if trial is ordered

3. Informs the prosecution of the nature of evidence to be produced in Court.

4. Enables the accused to see the case he has to answer.

5. Enables the president to see the nature of the case that has to be tried and check any inconsistency between evidence given at the taking of the summary of evidence and that given at the trial.

6. Can be read as the statement of the case for the prosecution if an accused pleads guilty at the trial.

### Time of commencement of Summary of Evidence.

The Summary of Evidence should, if possible, be commenced on the same day as the accused is remanded for such purpose.

### Qualification of Officer taking Summary.

The Commanding Officer may take the Summary of Evidence himself or may detail another officer to do so. *R.P. 4, note 7.*

An officer who has given material evidence at the preliminary investigation should not be detailed to take the summary. *R.P. 4, note 7.*

### Employment of clerk or typist.

A clerk or typist may be employed to assist in recording statements.

### Representation of accused at taking of Summary.

An accused may not be represented by counsel or his defending officer at the taking of a summary of evidence.

### Civilian witnesses.

Civilian witnesses can be compelled to attend at the taking of a Summary of Evidence by subpoena issued by the Commanding Officer. (See *R.P. 78.*)

(See page 25 for precedent.)

### Alterations to Summary of Evidence.

Once the Summary of Evidence has been completed, in no circumstances may the original document be altered. If the evidence is incomplete then additions or alterations must be made by an additional summary of evidence or by an additional statement of a witness under *R.P. 76.* (See page 23.)

### Copies required.

The original copy should be taken down in the handwriting of the officer taking the summary and signed by the witnesses. Additional copies should be typed. It should be recorded on foolscap with a left-hand margin. The pages should be numbered.

### Copy delivered to accused.

A copy of the summary of evidence should be delivered to the accused immediately after the summary has been completed.

# NOTES ON RECORDING SUMMARY OF EVIDENCE.

## Preliminary Proceedings.

1. The accused with escort should be brought before the officer detailed to take the Summary of Evidence.

*A Summary of Evidence cannot be taken in the accused's absence. R.P. 4 (C).*

2. The accused should be informed by the officer :

- (a) That a Summary of Evidence is about to be taken in his case.
- (b) The charge(s) that have been made against him [read charge(s)].
- (c) That when the Summary of Evidence has been considered, the charges may be added to, altered or dropped.
- (d) That he may demand that the witnesses give their evidence on oath (unless the Commanding Officer has so directed).
- (e) That he has the right to cross-examine each witness who gives evidence against him.
- (f) That he is not required to say anything in his defence, but that after the evidence for the prosecution has been recorded he will be cautioned and may, if he then so desires, make a statement or give evidence.
- (g) That he may call any witnesses in his defence, whose evidence will be recorded in a similar manner to that of other witnesses.

Witnesses are not present during these Preliminary Proceedings.

## Proceedings on oath.

Insert (as applicable).

The Commanding Officer directs that the evidence be taken on oath, *or*,

The Accused demands that the evidence be taken on oath, *or*,

The Accused does not require the evidence to be taken on oath.

## Description of witness.

Service witness :	Number,	Rank,	Full Name,	Unit,	Station.
Civilian witness :	Full Name,	Address,	Occupation.		

## Form of oath.

" I swear by Almighty God that the evidence which I shall give before this Court shall be the truth, the whole truth and nothing but the truth." *M.M.L., p. 763.*

For forms of solemn declaration, etc., see *M.M.L., p. 763.*

The oath is administered by the officer taking the Summary.

## Witnesses.

The evidence of all the witnesses who gave evidence at the investigation before the Commanding Officer should be recorded providing the evidence is relevant.

The evidence of witnesses who do not give evidence at the investigation before the Commanding Officer must also be taken for either the prosecution or the defence, provided that their evidence appears to be relevant to the charges.

## Recording of Evidence.

Evidence must be recorded in narrative form. Expressions such as " Used obscene language," " Adopted a threatening attitude," " Admitted his guilt," must not be used. Conversations, statements or actions must be described in detail. The witness should state exactly what happened or what was said.

## Rules of Evidence.

In recording the evidence at a Summary of Evidence, the evidence must be recorded in accordance with the rules of evidence. (See pages 26 to 29.)

## Evidence read to witness.

The evidence of each witness, when taken down, shall be read over to him. *R.P. 4 (E).*

## Alterations.

The original evidence as recorded should not be altered. If the witness desired to make any alteration it should be recorded as shown in the precedent.

## Cross-examination by accused.

The accused may put questions in cross-examination to any witness and the questions, with the answers, should be added in writing to the evidence taken down. *R.P. 4 (D).*

## Signature of witness.

The evidence of each witness . . . shall be signed by him and, if he cannot write his name, shall be attested by his mark and witnessed. *R.P. 4 (E).*

For further notes see page 18.

## SPECIMEN SUMMARY OF EVIDENCE.

(Accused charged under S. 8 A.A. with striking his superior officer.)

PAGE I

### **Summary of Evidence in the case of No. 1234567 Pte. T. Atkins, 1st West Surrey Regt.**

*The Commanding Officer directs that the evidence be taken on oath.*

*First Witness for  
Prosecution.*

*421068 Corporal A. Jones, 100th Provost Company, Corps of Military Police, Mudhampton, having been duly sworn, states:—*

*At 2300 hours on the 11th June, 1939, I was on duty outside the Ritz Cinema, High Street, Mudhampton. I was accompanied by 612438 Lance-Corporal H. Smith, 100th Provost Company, C.M.P. I saw the accused, whom I now recognize, approaching me. On reaching me I said to him: "Why aren't you in barracks? I want to see your pass." He replied: "What's that got to do with you?" At the same time he struck me on the jaw with his left fist. The blow was a violent one and knocked out two teeth in my lower left jaw. Lance-Corporal Smith closed with the accused and took him away. I proceeded to the Military Hospital for treatment. I was in uniform at the time. I was wearing the badges of rank of a Corporal. The lights of the Cinema were bright and my badges of rank could be easily seen. The accused was sober.*

*On his evidence being read to him the witness desires to make the following alteration:—*

*"The accused struck me with his right fist and not his left fist."*

*The accused declines to cross-examine this witness.*

*A. Jones, Corporal.*



## NOTES ON RECORDING SUMMARY OF EVIDENCE (continued)

### Exhibits.

Exhibits which are produced as part of the evidence should be recorded as follows :—

“ I produce.....which is marked ‘ A ’ (or other letter) and (in the case of documents) is attached to the Summary.”

In the case of documentary exhibits, the exhibit itself should *not* be marked but a small label or slip of paper marked with the appropriate letter should be attached to the exhibit.

### Plans.

The production of plans should be as follows :—

“ I produce a plan of.....which is marked ‘ A ’ (or other letter) and attached to the proceedings.”

The witness producing the plan must say :—

- (a) that he made the plan ;
- (b) that it is drawn to scale ;
- (c) that it correctly delineates what it purports to show.

### Opinion as to drunkenness, etc.

Where a witness expresses his opinion on certain matters as in the case of drunkenness, he must give his reasons for his opinion. (See page 27 regarding “ Evidence of Opinion.”)

### Values.

In cases of offences occasioning loss or damage for which compensation can be made, evidence of a competent witness to assess the value must be given. The values must be assessed in accordance with K.R. 657. In the case of clothing or equipment see K.R.

### Absentees and Deserters.

In cases of absence and desertion the contents of certain documents are *prima facie* evidence of facts contained in the documents without further proof.

The documents in question must be produced on oath by a witness and the witness must state that the accused is the person referred to in the documents.

For lists of documents see page 29.

### Defaulters.

Evidence that the accused was a defaulter at the time the offence was committed must be produced in accordance with K.R. 678.

The copy of the record in the Guard Report (Army Form B 160) or the Minor Offence Report (Army Form B 281) must be produced on oath and the witness must identify the accused as the person referred to in the report.

### R.P. 4 (G).

### Absent witness.

If a person cannot be compelled to attend as a witness, or if owing to the exigencies of the Service or on other grounds, the attendance of any witness cannot, in the opinion of the officer taking the Summary, be readily procured, a written statement of his evidence, signed by the witness, may be read to the accused and included in the Summary of Evidence.

In these circumstances the officer taking the Summary should certify as follows :—

“ I certify that in my opinion, the attendance of.....is, owing to (*here set reason*) not readily procurable and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto, as exhibit ‘ A. ’ ”

(Signed).....  
Officer detailed to take Summary.

NOTE.—This procedure can only be adopted if the accused does not require the attendance of this witness for the purpose of cross-examination.

According, although not necessary, it is advisable to insert the following certificate signed by the accused :—

“ I do not require the attendance of.....for the purpose of cross-examination.”

(Signature of Accused).....



*Second Witness  
for Prosecution.*

612438 Lance-Corporal Henry Smith, 100th Provost Company, Corps of Military Police, Mudhampton, having been duly sworn, states:—

At 2300 hours on the 11th June, 1939, I was on duty outside the Ritz Cinema, High Street, Mudhampton. I was with 421063 Corporal Jones of the same unit as mine. I saw the accused, whom I now recognize, walking towards us. Both Corporal Jones and I were in uniform, and wore our badges of rank. It was quite light owing to the lights of the cinema. As the accused reached us Corporal Jones said to the accused: "You are out late. Why aren't you in barracks? Where's your pass?" The accused said: "What's that got to do with you?" and he struck Corporal Jones on the face. The blow was made by the accused with his right fist and he hit the Corporal on the left jaw. As he struck the Corporal the accused said: "Take that, you blighter!" I immediately closed with accused and escorted him to Mudhampton Barracks, where he was placed in the Guard Room and charged. I made a report to the Guard Commander. The accused was sober.

Cross-examined by the accused.

Q. Are you sure you heard me say: "Take that you blighter"?

A. Yes.

Q. Did I say to you on the way to the Guard Room: "I didn't realize you were Military Police. I thought you were two pals of mine and were pulling my leg"?

A. No.

Q. Did I show you a pass entitling me to be out of barracks until midnight?

A. Yes.

(Signed) H. Smith, Lance-Corporal.

*Third Witness  
for Prosecution.*

Captain A. S. Carter, R.A.M.C., 4th General Hospital, Mudhampton.

I certify that in my opinion the attendance of this witness is, owing to this officer being employed on special duty, not readily procurable, and a written statement of his evidence, signed by him, has been read to the accused and is attached hereto as Exhibit "A."

B. Howitzer, Lieutenant.

(Officer detailed to take Summary.)

I do not require the attendance of this witness for the purpose of cross-examination.

T. Atkins. (Accused.)

## NOTES ON RECORDING SUMMARY OF EVIDENCE (continued)

Statement of  
accused.

(If the accused elects to make a statement it should be commenced on a separate sheet.)

After the evidence of the witnesses for the prosecution has been recorded the accused should be cautioned as follows :—

Do you wish to make any statement or to give evidence on oath. You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence. *R.P. 4 (E).*

### NOTES.

(a) A statement is made *not on oath*.

Evidence is given *on oath*.

(b) A record that this caution has been given must be included in the Summary. *R.P. 4, note 8.*

(c) If the accused says anything before this caution has been administered, what he says is inadmissible as evidence. *R.P. 4, note 8.*

(d) Whether the accused makes a statement (*i.e.*, not on oath) or gives evidence (*i.e.*, on oath) is at the option of the accused. *R.P. 4, note 8.* Even if the other witnesses are not sworn, the accused may give evidence on oath.

(e) Even if the Commanding Officer has directed that the evidence shall be taken on oath, this does not apply to the accused. *R.P. 4, note 9.*

(f) The accused cannot be cross-examined on any statement that he makes or evidence that he gives, but he may be asked questions to remove patent ambiguities. *R.P. 4 (E).*

Witness or the  
defence.

The accused may call witnesses in his defence. Their evidence shall be recorded in a similar manner to that of witnesses for the prosecution.

Certificate by Officer  
taking the Summary.

The officer taking the Summary must complete the proceedings by the certificate shown, and duly sign and date the certificate.

*N.B.*—A copy of the Summary of Evidence should be delivered to the accused immediately after it has been completed.

*The accused was cautioned as follows:—*

*Do you wish to make any statement or to give evidence on oath? You are not obliged to say anything or give evidence unless you wish to do so, but whatever you say or any evidence you give will be taken down in writing and may be given in evidence.*

*After the above caution the accused elected to give evidence as follows:—*

*First Witness for  
Defence.*

*The accused, 1234567 Private T. Atkins, 1st West Surrey Regiment, Mudhampton, having been duly sworn, states:—*

*On the night of the 11th June I went to the town with two pals. I had a pass entitling me to be out of barracks until midnight. We spent most of the evening drinking. We left the "Crown" at closing time. It was dark and I lost them. I was walking back to barracks past the Ritz Cinema when I was stopped by two men. I thought they were my two pals, and when I was asked for my pass I thought they were pulling my leg. I did not know they were Military Police. The lights of the Cinema dazzled me and I could not distinguish who they were or that they were N.C.Os.*

*T. Atkins.*

*The accused does not call any witnesses for the defence.*

*I certify that the foregoing Summary of Evidence consisting of three pages was taken down by me in the presence of the accused and that Rules of Procedure 4 (C), (D), (E) and (F) have been complied with.*

*B. Howitzer, Lieutenant,  
1st West Surrey Regiment.*

*Mudhampton.*

*14th June, 1939.*



EXHIBIT "A"

**Statement of Captain A. S. Carter, R.A.M.C.,  
4th General Hospital, Mudhampton.**

*I was Orderly Officer of No. 4 General Hospital, Mudhampton, on the 11th June. At 2340 hours, Corporal A. Jones, 100th Provost Company, C.M.P., was admitted and I attended him. He was suffering from a fracture of the lower left jaw and two teeth were missing. I am of opinion the fracture had been caused by a blow.*

A. S. Carter,  
Captain, R.A.M.C.

## **ADDITIONAL EVIDENCE.**

If it appears to the Commanding Officer or Convening Officer that additional evidence is required, this evidence may be obtained either by

- (a) an additional Summary of Evidence, or
- (b) by a statement taken under the provisions of R.P. 76.

If the additional evidence is extensive and involves several witnesses, then an additional Summary of Evidence should be taken.

The document should be headed

“ Additional Summary of Evidence in the Case of, etc.,”  
and the same procedure should be adopted throughout.

At the end of the additional evidence of the further witnesses for the prosecution the accused should be again cautioned and given the opportunity to make a statement or further statement or give evidence and be allowed to call witnesses.

If the additional evidence is not extensive and involves few witnesses, signed statements may be obtained from the witnesses, under the provisions of R.P. 76.

In either case a copy of the Additional Summary of Evidence or the Statement of Evidence should be attached to the original summary and copies delivered to the accused as soon as possible.

## SUBPŒNA TO CIVILIANS TO ATTEND TO GIVE EVIDENCE AT THE TAKING OF A SUMMARY OF EVIDENCE.

### Authority.

A civilian may be subpœnaed to attend to give evidence at the taking of a Summary of Evidence. *R.P. 78 (B).*

The subpœna must be signed by the Commanding Officer of the accused.

### Kinds of Subpœna.

There are two kinds of subpœna :—

- (a) Subpœna duces tecum—a subpœna to produce documents.
- (b) Subpœna ad testificandum—a subpœna to give evidence.

### Documents.

If the witness is required to produce documents, the list of documents must be set out (on the reverse of Form A. 12, if necessary).

### Manner of Service.

The subpœna should be delivered by a warrant officer or non-commissioned officer, not below the rank of serjeant. In case of difficulty, the assistance of the civil police should be obtained. *R.P. 78, note 5.*

### Civilians abroad.

A civilian abroad cannot be compelled to attend at the taking of a Summary of Evidence. *R.P. 78 and notes.*

A civilian in the United Kingdom cannot be compelled to attend a Summary of Evidence taken abroad. *R.P. 78 and notes.*



**FORM OF SUMMONS TO A WITNESS IN THE CASE OF  
A SUMMARY OF EVIDENCE.**

*To* Mr. Harry Smith, 149, High Street, Mudhampton.

WHEREAS a charge of having committed an offence triable by Court-Martial has been preferred before me against (*number, rank, name, unit*), No. 1234567 Private T. Atkins, 1st Battalion, West Surrey Regt. and whereas I have directed a summary of the evidence to be taken in writing at (*place*) Delhi Barracks, Mudhampton on the tenth day of June, 1939, at 10 o'clock in the fore noon:

I do hereby summon and require you (*name*) Harry Smith, to attend as a witness at the said place and hour and to bring with you the documents hereinafter mentioned, viz.: \*

\* Delete if  
inapplicable.

Whereof you shall fail at your peril.

Given under my hand at Mudhampton on the fourth day of June 19 39 .

Signature A. R. JOHNSTON, Lt.-Col.  
Commanding Officer of the accused.

Delhi Barracks,  
4th June, 1939.

O.C., 1st West Surrey Regt.

# DIGEST OF THE RULES OF EVIDENCE.

The rules of evidence to be adopted in proceedings before a Court-Martial shall be the same as those which are followed in civil courts in England, and no person shall be required to answer any question or to produce any document which he could not be required to answer or produce in similar proceedings before a civil Court.

These rules are partly contained in statutes and partly in judicial decisions. They are more fully explained in Chapter VI, "Manual of Military Law," which should be studied carefully. The following is an epitome of the principal rules.

## DIRECT AND INDIRECT (CIRCUMSTANTIAL) EVIDENCE.

- (a) Direct Evidence is the evidence of persons who were present and saw or heard what happened.
- (b) Indirect (Circumstantial) Evidence is the evidence of persons who were not present, who tell of facts from which can be drawn the inference as to whether events did or did not happen.

## CLASSIFICATION OF EVIDENCE.

- (1) What must be proved.
- (2) What facts are assumed to be known (judicial notice).
- (3) By which side the proof must be given (burden of proof).
- (4) What statements are admissible as evidence (admissibility of evidence).
- (5) When confessions or admissions may be admitted as evidence (confessions or admissions).
- (6) Who may give evidence (competency of witnesses).
- (7) What questions need not be answered and what documents need not be produced (privilege of witnesses).
- (8) How evidence is given.

## FACTS TO BE PROVED.

Each charge should allege a specific event constituting a breach of a specific enactment. The enactment must be studied to ascertain the various ingredients that it is necessary to prove to substantiate the charge.

## JUDICIAL NOTICE.

A Court may without proof take judicial notice of the following :—

- (1) All matters of notoriety.
- (2) All matters within their general service knowledge.
- (3) Acts of Parliament.
- (4) Proceedings of the House of Lords and House of Commons.
- (5) The course of proceedings and rules of practice of the Supreme Court.
- (6) The Navy, Army and Air Force Lists as regards appointments and seniority.
- (7) The ordinary course of nature.
- (8) The natural and artificial divisions of time.
- (9) The meaning of English words.
- (10) Other matters directed by statute.

## THE BURDEN OF PROOF.

As a general rule, where the nature of the case is such as to admit of explanation or contradiction the Prosecutor will, in the first instance, call such evidence in proof of the commission of the offence by the accused as would warrant a reasonable conclusion of guilt. The onus of giving an explanation of contradiction is thus shifted to the accused, but if such evidence of contradiction is given by the defence, the onus of rebutting this reverts to the Prosecutor.

It must be remembered that—

- (a) a man is presumed to be innocent until he is proved guilty ;
- (b) he who alleges a fact must prove it.

## THE INADMISSIBILITY OF EVIDENCE.

The following are inadmissible :—

- (a) Evidence which does not tend immediately to prove or disprove the charge. (The rule as to relevancy.)
- (b) Evidence that is not the best evidence obtainable. (The rule as to best evidence.)
- (c) Evidence which is hearsay (subject to certain exceptions). (The rule as to hearsay.)
- (d) Evidence which is opinion (subject to certain exceptions). (The rule as to opinion.)

## THE RULE AS TO RELEVANCY.

What is relevant evidence is generally a matter of common sense. The test is :—

- (a) Has the evidence a direct bearing on the case ? ; or
- (b) Does it tend to prove or disprove the charge ?

## THE RULE AS TO BEST EVIDENCE.

No evidence that leads the Court to the supposition that other and better evidence is available can have any weight, as the failure to produce the best evidence may lead to the supposition that such evidence is withheld for some secret or sinister motive.

This rule principally applies to documents and the rule is sub-divided as follows :

- (1) That an oral account of the contents of a document can never be received if the document itself is obtainable.
- (2) That, subject to certain exceptions, the copy of a document is not admissible when the original document can be produced.

In these cases the document itself is said to be "primary" evidence, whilst the oral account or copy is called "secondary" evidence.

Secondary evidence may be given in the following cases :—

- (a) When the original document is shown to be or appears to be in the possession of the adverse party, and he, after being given notice to produce, does not do so.
- (b) When the original document is in the hands of a third party, who has been given notice to produce it and has failed to do so.
- (c) Where the original document is shown to be lost and evidence of a proper search has been given.
- (d) When the original document is of such a nature as to be not easily removed, such as a tombstone, poster or notice.
- (e) When a document consists of entries in a banker's books, and can be proved in court under the provision of the Bankers' Books Evidence Act, 1879.
- (f) When the document is one for the proof of which special provision is made by an Act of Parliament.

Secondary evidence of a document may not be given if

- (a) the original document was not properly executed;
- (b) the production of the original has been refused on account of State privilege.

Secondary evidence is usually given as follows :—

By producing a copy and calling a witness who can prove this copy to be correct, or where there is no copy available, by calling a witness who has seen the original document and can give an account of its contents.

## THE RULE AS TO HEARSAY.

A statement made not in the hearing of an accused is inadmissible as evidence against him, subject to the following exceptions :—

- (a) In the case of a dying declaration.
- (b) In cases where the statement forms part of the *res gestæ*.
- (c) In the case of deceased persons having made a statement against their pecuniary interest.
- (d) In the case of a deceased person making a statement in the strict course of duty.

A dying declaration is a statement made by a person who was the victim, if

- (a) he was in actual danger of death at the time;
- (b) there was no hope of recovery;
- (c) he had religious beliefs;
- (d) is now dead and would have been a competent witness if alive.

Dying declarations are only admissible in trials for murder or manslaughter.

The rule as to hearsay applies to documents as well as to oral statements.

Hearsay is excluded as evidence because

- (a) the original statement is not on oath;
- (b) the party against whom the statement was made is absent and therefore unable to reply or comment on the statement;
- (c) a story retold is usually added to or exaggerated;
- (d) the Court cannot see the demeanour of the party making the original statement, nor can he be cross-examined.

## RULES AS TO OPINION.

The general rule is that the opinion or belief of a witness is not evidence. A witness may depose to a particular fact which he has seen, heard or otherwise observed, and it is for the Court to draw the necessary inference from these facts.

The chief exception to this rule relates to the evidence of experts, e.g., a medical expert may give evidence of the apparent physical condition of a person or the mental condition of an accused or witness he has under observation; a handwriting expert may give evidence as to handwriting; an officer may give his opinion on a point within his special Service knowledge, but to make such opinion admissible his knowledge must be of a kind not possessed by the Court generally.

Evidence may be given, however, by persons who are not experts on such matters as identification, character, drunkenness, the speed of a motor vehicle; and in flying cases, the height of an aeroplane.



## ADMISSIONS AND CONFESSIONS.

No statement made by an accused is admissible in evidence against him unless it is shown by the prosecution to have been a voluntary statement, and has not been obtained from him by fear, inducement or threat or hope of reward or advantage offered by a person in authority.

## COMPETENCY OF WITNESSES.

Any person may be a competent witness, except

- (a) the King;
- (b) idiots;
- (c) people who are too young to understand the nature of an oath (this is a matter for the Court).

Except in special cases the wife of an accused

- (1) can only give evidence for the defence; and
- (2) can only give evidence if her husband applies that she should do so.

The special cases in which a wife may give evidence for the prosecution are set out on page 96, footnote 1, M.M.L.

## PRIVILEGE OF WITNESSES.

Witnesses generally.

A witness cannot be compelled to answer any question which, in the opinion of the Court, would tend to expose him to any criminal charge, penalty or forfeiture, or any military punishment.

Accused.

An accused who gives evidence may be asked any question in cross-examination, even if such question would tend to incriminate him as to the offence charged, but he may not be asked, and if he is asked, he must not be required to answer, any question tending to show that he has committed or been convicted of or been charged with any other offence, or is of bad character, unless

- (1) the proof that he has committed or been convicted of such other offences is admissible evidence to show that he is guilty of the offence with which he is charged; or
- (2) he has personally or by his counsel or defending officer asked questions of the witnesses for the prosecution with a view to establishing his own good character, or has given evidence of his good character, or the nature of the conduct of the defence is such as to involve imputation on the character of a witness for the prosecution; or
- (3) he has given evidence against any other person charged with the same offence.

Wives.

A wife cannot be compelled to disclose any communication made to her by her husband during marriage.

Doctors and Clergymen.

Doctors and clergymen are not privileged from disclosing communications made to them in professional confidence.

Legal Advisers.

Legal advisers are privileged from disclosing communications made to them as legal advisers to the accused, except where

- (a) such communications are made in furtherance of any criminal purpose;
- (b) such communications of which the legal adviser became acquainted, became known to him otherwise than in his capacity of Legal Adviser.

Defending Officers.

The same privilege applies to Defending Officers as to Legal Advisers.

## NOTES ON EVIDENCE, RELATING PARTICULARLY TO COURTS-MARTIAL.

Confidential Documents.

Confidential documents cannot be produced at a Court-Martial other than by the consent of superior authority. This consent should be refused if the production or disclosure is considered detrimental to public interest.

Proceedings of Courts of Inquiry.

The proceedings of a Court of Inquiry are not admissible as evidence before a Court-Martial, nor can witnesses be examined as to their contents, nor is any confession or statement made at a Court of Inquiry admissible against an officer or soldier before a Court-Martial, unless the Court-Martial is held for the trial of an officer or soldier for wilfully giving false evidence before a Court of Inquiry.

Statement of accused at Summary of Evidence.

The statement of an accused made at the taking of a Summary of Evidence is admissible as evidence, provided it is produced on oath and the accused was properly cautioned in accordance with R.P. 4 (E).

Service Documents.

Under the provisions of S. 163 of the Army Act, the contents of certain military documents are evidence against an accused, provided certain provisions have been complied with in the execution of such documents. Further, under this section the record of certain regimental books, made in the pursuance of military duty and purporting to be signed by the Commanding Officer or by the officer whose duty it is to make such record, shall be evidence to the facts therein.

The books are as follows: Army Orders; Regimental Order Book; Regimental Order Book, box file; Record of Service (Officers); Record of Services and Ages (Men); Historical Records of Regiment; Register of Soldiers; Attestations (Portfolio); Regimental Conduct Sheets; Postage Book; Copies of Returns; Guard and Minor Offence Reports (a); Courts of Inquiry—Records of Declarations.

## EVIDENCE IN THE CASE OF ABSENTEES AND DESERTERS.

Absence and  
Desertion.

Further, under S. 163 in cases of Absence and Desertion, the production on oath of certain documents is evidence of the facts contained therein without further proof. The documents are :—

A.F. B 115. [Record of Declaration of Court of Inquiry. (See page 31.)]

The production of this form, duly completed, is :—

Evidence of commencement of a period of absence.

Evidence of a deficiency of kit, etc., on a certain date.

A.F. O 1617. (Applicable where an absentee or deserter has *surrendered* to the police and does *not* appear before a magistrate.) (See page 33.)

The production of this form duly completed is :—

Evidence of fact, time, date, etc., of surrender.

A.F. O 1618. (Applicable where an absentee or deserter is *apprehended* by the police and *appears* before a magistrate.) (See page 35.)

The production of this form duly completed is :—

Evidence of fact, time, place, etc., of apprehension.

Certificate under S. 163 (1) (j). (Applicable where an absentee or deserter surrenders to Provost-Marshal or another unit.) (See page 37.)

The production of this certificate duly completed is :—

Evidence of fact, time, place, etc., of surrender.

Certificate under S. 163 (1) (m). (Applicable where an absentee or deserter is *apprehended* and does *not* appear before a magistrate.) (See page 39.)

The production of this certificate duly completed is :—

Evidence of fact, time, place, etc., of apprehension.

## EVIDENCE IN CASE OF DESERTION (Form B 115).

Where a record is made in one of the regimental books in pursuance of any Act or of the King's Regulations, or otherwise in pursuance of military duty, and purports to be signed by the Commanding Officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts thereby stated. *S. 163 (1) (g).*

A copy of any record in one of the said regimental books purporting to be certified to be a true copy by the officer having the custody of such book shall be evidence of such record. *S. 163 (1) (h).*

When a soldier has been absent from his Unit without leave for 21 *clear* days, a Court of Inquiry should be held as soon as practicable afterwards [A.A. 72 (I)], unless before such Court of Inquiry has been assembled it has come to the knowledge of the soldier's Commanding Officer that the soldier has been apprehended or has surrendered.

The Proceedings are entered on an A.F. A 2 and conducted in accordance with the regulations contained in R.P. 125. The Court must be satisfied that the absence is without leave or other sufficient cause.

The Proceedings are signed by all the members of the Court, and he is declared an absentee; the declaration of the Court is then entered in Army Book 161 by the Commanding Officer of the absentee at the time the Court was held, together with the rank, names and units of the President and members, and the entry is vouched for by such Commanding Officer signing such entry in the space provided in the book. When these entries have been made A.F. A 2 will be destroyed. *K.R. 1708.*

Upon his subsequent arrest or surrender an A.F. B 115 will be made out, certified as a true copy by the officer having custody of the Army Book, and produced by a witness at the investigation, at the Summary of Evidence and also on oath at his subsequent trial by District Court-Martial.

When loss by neglect of equipment, clothing and regimental necessities is alleged, before a Court of Inquiry is entitled to find deficiencies they will require evidence :—

- (1) that the absentee has been at some time previously in possession of a complete kit, or, at any rate, of the articles alleged to be deficient;
- (2) that an inventory of his kit had been taken at the time he went absent, and at the taking of the inventory certain specified articles were deficient;
- (3) that none of the articles have since been recovered. (Any articles recovered will, of course, be omitted.)

It is not sufficient to find that the accused has lost "all his equipment, etc." The missing articles must be specified in detail. The value of the equipment and public clothing must be stated.

(A) The particulars on A.F. B 115 must be a correct extract from A.B. 161 and free from alteration or erasure. *R.P. 125, note 3.*

(B) Here insert the name of the Commanding Officer at the time the entry of the Court of Inquiry was made on A.B. 161.

(C) Must be the signature of the officer in actual custody of A.B. 161 at the time the form A.F. B 115 is completed.

Completion of  
A.F. B 115.



# **RECORD OF THE DECLARATION OF A COURT OF INQUIRY ON THE ILLEGAL ABSENCE OF A SOLDIER.**

RECORD of the Declaration of a Court of Inquiry assembled at.....  
on the.....day of.....19....., for the purpose of  
investigating and recording the absence, without leave, from his duty, and deficiency,  
if any, in the Arms, Ammunition, Equipments, Instruments, Regimental Necessaries,  
or Clothing of No.

## **DECLARATION. (A)**

The Court declare, that ..... (number, rank, name, corps)  
illegally absented himself without leave (or other sufficient  
cause) at ..... (station or place)..... on the .....  
day of ..... that he is still so absent, and that  
on the ..... (date on which the inventory of kit was taken) .....  
he was deficient, and that he is still deficient of  
the following articles (value of equipment and public clothing to be  
stated).

.....  
.....  
.....

Names of President and Members.

(Here insert ranks, names and units).

Signature of Commanding Officer..... (B)

CERTIFIED TRUE COPY.

..... (C)  
Signature of Officer having custody of the  
Original Record.

## **PRECEDENT FOR ORDER FOR COURT OF INQUIRY UNDER S. 72.**

1. A Court of Inquiry, composed as under, will  
assemble at (place and time) on (date) to investigate and report  
on the illegal absence and deficiency of arms,  
equipment, clothing and regimental necessities (if any) of  
No. 1234567 Pte. T. H. Atkins, "B" Company,  
1st West Surrey Regt.

President :—

.....

Members :—

.....

.....

2. The O.C., "B" Company will direct all witnesses  
to attend as required.

3. The proceedings will be forwarded to the Adjutant,  
1st West Surrey Regt.

## NOTES ON A.F. O 1617.

*Note.*—This form is applicable where a deserter or absentee *surrenders* to the civil police.

Where the proceedings are proceedings against an officer or soldier on a charge of being a deserter or absentee without leave, and the officer or soldier has been delivered into military custody by a police officer in charge of a police station, in the United Kingdom, a certificate purporting to be signed by such police officer, and stating the fact, date and place of the surrender of the officer or soldier shall be evidence of the matters so stated. S. 163 (1) (K).

The certificate referred to in the above section is A.F. O 1617.

The production of this form is only evidence of the following :—

- (a) The fact of surrender.
- (b) Hour, date, place of surrender.

In order for this form to be admissible as evidence, it must be signed by the police officer *actually in charge of the police station* to which the absentee was taken. It cannot be signed by another officer on his behalf.

The use of this form is only applicable in the United Kingdom.

Form A.F. O 1617 actually consists of four pages. The only relevant page is page 2, which is produced below :—

I CERTIFY that the man whose personal description is given below surrendered himself to\* .....  
at ..... at (hour) ..... on the  
..... day of ..... as being No. ....  
(Rank and Name) .....  
a deserter (or absentee without leave) from ..... Regiment,  
and it appears to me from his confession that he is a deserter or absentee without leave.

\* After the word "to" to be inserted the name and rank of the police officer concerned.

Age ..... Height ..... feet..... inches  
Complexion..... Hair..... Eyes.....  
Marks.....

Probable Date and  
Place of Attestation )

Probable Date of  
Desertion or beginning  
of absence, and from  
what place )

Signature of Officer of Police  
in charge of )

..... Station.

..... Date of Signature.



## NOTES ON A.F. O 1618.

This form is only applicable where a deserter or absentee is *apprehended by the Civil Power and appears before a magistrate.*

S. 163.—(I) (i) A descriptive return within the meaning of this Act, purporting to be signed by a justice of the peace, shall be evidence of the matters therein stated.

The descriptive return referred to in the above section is A.F. O 1618.

The production of this form is only evidence of

(a) the apprehension;

(b) the hour, date, place and particulars of apprehension.

If any particulars are inserted on the form in the space marked (\*) and are irrelevant, inadmissible as evidence or prejudicial to the accused, they should be passed over so that they may not come to the notice of the Court. S. 163, *note* 10.

In order for the form to be admissible as evidence it must be properly signed by a magistrate.

Form A.F. O 1618 actually consists of four pages. The only relevant page is page 2, which is produced below :—

DESCRIPTIVE RETURN of § .....who  
‡ .....at.....(hour).....on the.....day  
of....., and was committed to confinement at.....  
on the.....day of.....as a Deserter (or Absentee without  
leave) from the.....Bn. of the.....  
Regiment of.....

Age..... Height.....feet .....inches  
Complexion..... Hair..... Eyes.....  
Marks..... In uniform or plain clothes .....

Probable date and place of attestation

Probable date of desertion or beginning  
of absence and from what place.

Name, occupation and address of the  
person by whom or through whose  
means the Deserter (or Absentee  
without leave) was apprehended and  
secured.

Particulars in the evidence  
on which the prisoner is  
committed, and showing  
in what manner and  
upon what grounds he  
was apprehended. The  
fullest possible details to  
be given.

\*

I DO HEREBY CERTIFY that the Prisoner  
has been duly examined before me as to  
the circumstances herein stated, and has  
declared in my presence that he†

the before-mentioned Corps.

..... Signature

..... Residence

..... Post Town

..... Date of Signature

.....Signature of Prisoner

.....Signature of Informant

}  
of  
Committing  
Magistrate.

Or where the Prisoner confessed, and evidence of the truth or falsehood of such confession is not  
then forthcoming.

I HEREBY CERTIFY that the above-named  
Prisoner confessed to the circumstances above  
stated, but that evidence of the truth or  
falsehood of such confession is not forth-  
coming, and that the case was adjourned until  
the..... day of .....  
for the purpose of obtaining such evidence.

..... Signature

..... Residence

..... Post Town

..... Date of Signature

}  
of  
Magistrate.

§ Care should be taken to insert Army No. and Rank.

‡ Insert "was apprehended" or "surrendered," as the case may be.

\* It is important for the public service, and for the interest of the Deserter or Absentee without  
leave, that this part of the return should be accurately filled up, and the details should be inserted by  
the Justice in his own handwriting, or under his direction, by his Clerk.

† Insert "is" or "is not a Deserter" or "Absentee without leave from," or "belongs," or "does  
not belong to," as the case may be.

### **CERTIFICATE UNDER S. 163 (I) (J).**

Applicable where a deserter or absentee has surrendered to the Provost-Marshall or other body of H.M. Forces. See S. 163 (1) (j).

Where the proceedings are proceedings against an officer or soldier on a charge of being a deserter or absentee without leave, and the officer or soldier has surrendered himself into the custody of a Provost-Marshall, Assistant Provost-Marshall or other officer, or any portion of His Majesty's forces, a certificate purporting to have been signed by such Provost-Marshall, Assistant Provost-Marshall or other officer, or by the Commanding Officer of the portion of His Majesty's forces to whom the surrender was made, and stating the fact, date and place of such surrender shall be evidence of the matters so stated.

The certificate must be signed by the Provost-Marshall, Assistant Provost-Marshall or other officer—or when surrender is made to a unit—*by the Commanding Officer of that Unit (not an officer on his behalf).*



## CERTIFICATE UNDER S.163 (I) (J).

*Certificate.*—Where a deserter or absentee surrenders to a Provost-Marshal, or other officer, or to any body of His Majesty's forces, the certificate should be as follows :—

\* Here insert rank, name, etc., of the person to whom the deserter or absentee surrendered himself.

† The officer must state his qualification in accordance with S. 163 (1) (j).

I ..... certify that ..... of the .....  
surrendered himself to \*..... at ..... on the  
..... day of ..... 19..... as a deserter (or  
absentee without leave).

..... †

*Signature.*

*Date* .....

K.R. 613 (c); S. 163 (1) (j).

### CERTIFICATE UNDER S. 163 (1) (M).

Applicable where a deserter or absentee is *apprehended* and *does not* appear before a magistrate.

Where an officer or soldier has been apprehended and on arrest taken to a police station in any place in any part of His Majesty's dominions, or has on surrender been taken into custody at any such police station, then, for the purpose of any proceedings against that officer or soldier, a certificate purporting to be signed by the police officer in charge of that station, stating the fact, date and place of arrest or surrender, shall be evidence of the matters so stated. S. 163 (1) (m).

The certificate must be signed by the police officer *in charge* of the station to which the accused is taken.

NOTE.—This certificate may be used in any part of His Majesty's dominions.

## CERTIFICATE UNDER S. 163 (I) (M).

I certify that the person whose description is given below was arrested or surrendered) at (place), at (hour), on the                      day of                      , 19   .

Regimental particulars of  
officer or soldier  
referred to above.

No. ....  
Rank.....  
Name.....  
Unit.....

Description.

Age .....  
Height .....  
Complexion .....  
Hair.....  
Eyes.....  
Marks .....

Signature of officer of  
police in charge of  
police station where  
the above-named  
person was taken, or  
placed in custody,  
on arrest or  
surrender.

.....  
(In charge of.....  
Police Station.)



### **APPEARANCE OF ACCUSED BEFORE C.O. AFTER COMPLETION OF SUMMARY OF EVIDENCE, AND REMAND OF ACCUSED FOR TRIAL.**

After considering the Summary of Evidence the Commanding Officer should have the accused brought before him and :—

(1) In the case of a non-commissioned officer or soldier

(a) dismiss the case, or

(b) deal with the case summarily, or

(c) remand the accused for trial by Court-Martial, or

(d) remand the accused for the case to be referred to a superior authority for consideration.

(2) In the case of a warrant officer

(a) dismiss the case, or

(b) remand the accused for the case to be referred to superior authority for summary disposal under S. 47 of the Army Act or for trial by Court-Martial.

### **RELEASE FROM ARREST PENDING TRIAL.**

1. Pending trial an accused in close arrest may be placed in open arrest.
2. Pending trial, an accused in close or open arrest may be released without prejudice to rearrest. *K.R. 579.*

## **APPOINTMENT OF DEFENDING OFFICER.**

An accused person for whose trial a Court-Martial has been ordered to assemble shall be afforded proper opportunity of preparing his defence, and shall be allowed free communication with his witnesses, and with any friend, defending officer or legal adviser with whom he may wish to consult. *R.P. 14 (A).*

As soon as practicable after an accused has been remanded for trial by Court-Martial . . . an officer . . . shall ask him to state in writing whether or not he wishes to have an officer assigned by the Convening Officer to represent him at the trial, if a suitable officer should be available. *R.P. 14 (B).*

. . . the Convening Officer shall use his best endeavours to ensure that the accused shall be represented by a suitable officer. *R.P. 87 (B).*

The following should not be appointed defending officer :—

- (a) A Chaplain.
- (b) An officer of the Judge-Advocate-General's Office.
- (c) The officer who took the Summary of Evidence.
- (d) A witness in the case.
- (e) The Commanding Officer or subordinate commander of the accused.

A defending officer shall be allowed time and opportunity for properly preparing the defence of the accused. *R.P. 87, note 3.*

An accused person intending to be represented by counsel shall give to his Commanding Officer or to the convening officer the earliest practicable notice of such intention. . . *R.P. 89.*



# APPLICATION FOR DEFENDING OFFICER, ETC.

## PRECEDENT.

To :- O.C., 1st West Surrey Regt.

With reference to my pending trial by  
District Court-Martial.

(a) I propose to employ counsel for the  
purpose of conducting my defence.\*

\*Delete as  
applicable.

(b) I wish\*  
do not wish\* that an officer be  
assigned to act as defending officer.

(If Capt. A. B. Jones, 1st West Surrey Regt.  
is available, I wish that he may be assigned  
for this purpose.)†

†Insert as  
applicable.

T. ATKINS,

Private,  
1st West Surrey Regt.

## APPLICATION FOR DISTRICT COURT-MARTIAL.

Application for a District Court-Martial should be made on Form B 116 and accompanied by the following documents :—

- (a) Two copies of the charge sheet.
- (b) The original Summary of Evidence and two typewritten copies.
- (c) List of exhibits.
- (d) All original documentary exhibits.
- (e) List of witnesses for the prosecution, and the defence, with their present stations or addresses.
- (f) Correspondence (if any), showing the general position or otherwise concerning the case, which it is desirable that the Convening Officer should see, but not intended as part of the case for the prosecution.
- (g) Statement as to character, Form 296.
- (h) Conduct sheets, Forms 120 and 121, of the accused.
- (i) Statement by the accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial. *R.P. 14 (B)*.

Before applying for a Court-Martial the Commanding Officer should satisfy himself on the following matters :—

- (a) That the accused is subject to Military Law and is charged with an offence which is an offence against the Army Act.
- (b) That the offender is not exempt from trial under the provisions of A.A. 161.
- (c) That the offence is not one of those referred to in K.R. 573, which he can himself dispose of without reference to superior authority, or, if it is one of those offences, that from its gravity, or from the previous character of the accused, he ought not to deal with it on account of the inadequacy of his powers of punishment.
- (d) In cases of drunkenness, that A.A. 46 (3) and K.R. 602 do not require him to deal with the case himself.
- (e) That the evidence justifies the trial of the offender on the charge.
- (f) That the charge is properly framed under the appropriate section of the Army, or other, Act.
- (g) That when once an accused has elected to be tried upon the charge as read out to him from the guard report, it is in no circumstances added to or increased in gravity, unless facts subsequently appear which disclose a more grave offence or offences. [*See K.R. 575 (b).*]
- (h) That an officer had given the accused a copy of the summary (or abstract) of evidence as soon as practicable after he had been remanded for trial, and that his rights as to preparing his defence and of being assisted or represented at the trial had been explained to him by that officer. [*See R.P. 14 (B).*]

He should also satisfy himself that the following provisions have been complied with :—

- (a) The application for trial (A.F. B 116) must be accompanied by all necessary documents as therein specified, and the medical officer's certificate at the foot completed; the application should ordinarily be submitted within 36 hours after the accused had been remanded for trial. *R.P. 5*.
- (b) The name of the officer to act as prosecutor must be stated on the application.
- (c) If the accused has elected to be tried under A.A. 46 (8) the fact must be clearly stated on the form of application for trial.
- (d) The information required as to officers who have investigated the case, or sat on a Court of Inquiry, must be given with great care.
- (e) The application must be signed by the officer in actual command of the offender's unit.
- (f) The charge-sheet must be signed by the officer in actual command of the unit to which the accused belongs, and should state the place and date of signature.
- (g) Sufficient space should be left at the foot of the charge-sheet for the orders of the convening officer to be entered. The place and date should be entered by the officer signing the orders.

- (h) The section of the Act under which each charge is framed should be entered in the margin (in red ink) opposite the charge to which it refers.
- (i) If the accused has elected to be tried instead of submitting to a summary award, it should be so stated (in red ink) at the top of the charge-sheet.
- (j) When it is intended to prove any facts in respect of which any deduction from the ordinary pay of the accused can be awarded in consequence of the offence charged, those facts must be clearly shown in the particulars of the charge.
- (k) When part of the evidence is documentary, the statement of the witness made on producing the documents should be included in the summary; such statement must identify the accused as the person to whom the document refers or relates.
- (l) A statement of evidence as to facts should commence by recording the place, date and time (if material) to which the evidence refers.
- (m) All irrelevant, hearsay or otherwise inadmissible statements should be eliminated from the summary.
- (n) Written statements from witnesses not actually called must be signed and certified as required by R.P. 4 (G).
- (o) At the close of the evidence by each witness who is not cross-examined by the accused, it should be noted that "accused declines to cross-examine".
- (p) The evidence of each witness must be signed by him.
- (q) The record of any statement made by the accused should be prefaced by a note that he was formally "cautioned."
- (r) A statement that the requirements of R.P. 4 (C), (D), (E) have been complied with should be entered at the end of the summary of evidence and signed by the officer taking the evidence. The place and date should be stated.
- (s) The Convening Officer must be informed whether or not the accused desires to have a defending officer assigned to represent him at the trial.
- (t) Where the charge is for deficiency of kit, unless A.F. B 115 is to be produced in evidence, the fact that the accused has been at some time previously in possession of a complete kit, or of the articles alleged to be deficient, the date and place of discovering any subsequent deficiencies, and the fact that none of the articles have since been recovered, should be included in the Summary of Evidence. Any articles recovered will, of course, be omitted from the charge.
- (u) A.F. B 296, by whomsoever produced, is to be signed by the officer having the custody of the books from which it is compiled. In preparing this form, minor offences may be grouped as "miscellaneous"; offences of the same class as that being charged, should always be shown in a separate group.
- (v) Where A.F. B 115 is to be produced, it must be similarly signed. The original declaration of the Court of Inquiry (on A.F. A 2), even if in existence, is not admissible in evidence; nor is A.F. B 115, unless the entry in A.B. 161 (of which it is a certified copy) purports to have been signed by the officer in actual command of the accused's unit.
- (w) It should be noted that a "descriptive return" (A.F. O 1618) is only admissible as evidence of matters therein stated as facts, *e.g.*, that the accused was arrested on a particular day. It is not evidence of the date when his absence began, which must be proved by a witness.



# APPLICATION FOR COURT-MARTIAL (A.F. B 116).

Time.

The application should be made as soon as possible after an accused has been remanded for trial and the delay should not ordinarily exceed thirty-six hours. *R.P. 5 (B)*. Sunday, Christmas Day and Bank Holiday do not count in reckoning this thirty-six hours. *R.P. 135 (A)*.

Election for trial.

If an accused has elected trial, the following must appear at the top of Form B 116 in *red* ink [*S. 46 (8)*] :

"Accused has elected to be tried by Court-Martial."

Notes on completion of Form B 116.

- (1) Insert regiment or corps of C.O. making application.
- (2) Insert name of camp or barracks and station.
- (3) Insert "District."
- (4) Insert number of charges (including alternative charges) and (5) letter "s" if applicable.
- (6) Insert number, rank, full name and regiment or corps of accused. If holding acting, lance or temporary rank this must be stated. If the accused belongs to another unit and is attached to unit submitting this application, after the accused's unit add "Attached to" and the name of the unit to which he is attached.
- (7) Insert "Battalion," "Regiment," "Depot," as applicable; if none applicable insert "Unit."
- (8) Insert G.O.C. or officer whose duty it is to convene the Court.
- (9) Insert "District."
- (10) Insert here place suitable for trial.
- (11) Insert (a) Name of subordinate commander who investigated the charges.  
(b) Name of Commanding Officer who remanded accused for trial.  
(c) Name of the officer who took Summary of Evidence. *R.P. 19 (B) (iii)*.
- (12) }
- (13) }
- (14) } If a Court of Inquiry has been held respecting any matters connected with the charges, here  
insert details.
- (15) }
- (16) }
- (17) Insert name of station.
- (18) Insert "Exemplary," "Very Good," "Good," "Fair," "Indifferent," "Bad," "Very Bad." If no Conduct Sheet available insert "Unknown" or "No documents."
- (19) Insert number of charge sheets.
- (20) Insert No. (two typewritten copies of the Summary of Evidence should be forwarded in addition to the original.
- (21) See page 53 for details of this document. If the conduct sheets are not available, the application should not be delayed on this account.
- (22) See page 43 for precedent of this document.
- (23) Here insert the name of the Officer who will conduct the prosecution.
- (24) Must be signed by the Commanding Officer, not an officer on his behalf. *R.P. 5, note 3.*

(1) ..... **REGIMENT.**

STATION ..... (2) ..... Date ..... 19

**Application for a** ..... (3) ..... **Court-Martial.**

SIR,

I have the honour to submit ..... (4) ..... charge ..... (5) ..... against No. ....  
 ..... (6) .....  
 of the ..... (7) ..... under my command, and request you will obtain the sanction  
 of ..... (8) ..... that a ..... (9) ..... Court-Martial may be  
 assembled for his trial at ..... (10) .....

The Case was investigated by ..... (11) .....

A Court of Inquiry was held on ..... (12) ..... (date)  
 at ..... (13) ..... (Station).

President	..... (14) .....	} Ranks, Names and Corps.
Members	..... (15) .....	
	..... (16) .....	

The accused is now at ..... (17) ..... His General Character is ..... (18) .....

I enclose the following documents :—

1. .... (19) ..... Charge Sheet ..... (in duplicate).
2. Summary of Evidence, original and ..... (20) ..... copy.  
..... copies.
3. Original Exhibits.
4. List of witnesses for the prosecution and defence (with their present stations or addresses).
5. List of Exhibits.
6. Correspondence.
- (21) 7. Statement as to character (A.F. B 296) and regimental and company, etc., conduct sheets of accused.
- (22) 8. Statement by accused as to whether or not he desires to have an officer assigned by the Convening Officer to represent him at the trial.

(23) ..... **R.P. 14 (B).**

I have the honour to be,  
 Sir,  
 Your Obedient Servant,

Signature of  
 Commanding Officer } ..... (24) .....

To .....  
 .....

#### MEDICAL OFFICER'S CERTIFICATE.

I CERTIFY that No. .... Regiment

\* insert "fit" or "unfit." is\* ..... to undergo trial by Court-Martial.

Signature of the Medical Officer .....

## NOTES ON PREPARATION OF CHARGE SHEETS.

### Charge Sheets.

A charge sheet should contain the whole issue or issues to be tried by a Court-Martial at one time (*R.P. 11*) and may consist of one or more charges. *R.P. 11.*

Where there are two or more charges against the same accused any or all of such charges may be inserted on different charge sheets. *R.P. 62 (A).*

Where the accused is arraigned on separate charge sheets, the Court must arrive at their finding on one charge sheet before the next charge sheet is proceeded with.

### Single Charge Sheet.

General principles :—

- (a) Alternative charges must not be placed on separate charge sheets ;
- (b) A series of similar offences forming part of one escapade should be placed on one charge sheet ;
- (c) Repeated instances of the same or similar character should be included on a single charge sheet.

### Separate Charge Sheet.

As a general rule separate charge sheets should be prepared when—

- (a) the facts are complicated ;
- (b) the offences were committed at different times ;
- (c) different sets of witnesses are required ;
- (d) the offences are of a different nature ;
- (e) if from any other cause the accused would be embarrassed on a trial on a single charge sheet. *R.P. 62 and notes.*

### Adjutant's duty to prepare.

The charge sheet is usually prepared by the adjutant of the accused's unit. *R.P. 11, note 1.*

### Form.

A charge sheet will normally be written or typed on foolscap in the form shown on page 51.

### Where accused has elected trial.

It must be stated at the top of the charge sheet in *red ink* where an accused has elected to be tried by Court-Martial. *S. 46, note 17.*

### Description of accused.

The charge sheet should be commenced, in the case of a soldier, with the words "The accused," followed by his number, rank, name, unit and corps (if any), and description of unit attached to (if any); and if he does not belong to the Regular Forces should show by the description of him or directly by an express averment that he is amenable to Military Law in respect of the offence charged. *R.P. 12 (A).*

Full Christian names should be given (the surname should *not* precede the Christian name).

Any temporary, lance or acting rank must be shown—to ensure that the accused is charged in his *substantive* rank.

If a man has enlisted under an assumed name, he must be charged under that name.

For form of description of accused see pages 702 and 703, *M.M.L.*



Numbering of charges.

All charges (including alternative charges) must be consecutively numbered. *R.P. 11, note 3.*

Division of charges.

Each charge should be divided into two parts :—

- (1) The statement of the *offence*, e.g., “Deserting His Majesty’s Service.”
- (2) The statement of the *particulars* of the act, neglect or omission constituting the offence, e.g.,

“... in that he at Mudhampton, Blankshire, on the 12th July, 1939, absented himself from his unit until apprehended by the civil power at King’s Cross, London, on the 12th August, 1939.” *R.P. 13 (B).*

Statement of offence.

The offence should be stated, if not a civil offence, in the words of the Army Act, and if a civil offence, in such words as sufficiently describe that offence, but not necessarily in technical words. *R.P. 13 (C).*

Active service.

If the offence was committed on active service, the words “On Active Service” must be written prior to the statement of the offence, e.g.,

“When on Active Service, Deserting His Majesty’s Service.”

Statement of particulars.

The particulars should state such circumstances respecting the alleged offence as will enable the accused to know every act, neglect or omission which it is intended to be proved against him as constituting the offence. *R.P. 13 (D).*

The particulars in one charge may be framed wholly or partly by a reference to the particulars in another charge, and in that case so much of the latter particulars as is so referred to shall be deemed to form part of the first-mentioned charge as well as of the other charge. *R.P. 13 (E).*

Where it is intended to prove any facts in respect of which any deduction from ordinary pay can be awarded as a consequence of the offence charged, the particulars should state those facts. *R.P. 13 (F).*

The statement of the particulars must support the statement of the offence. These should disclose such circumstances respecting the alleged offence as will enable the accused to know what act, neglect or omission it is intended to prove against him as constituting the offence. As a general rule they will commence with the date and place of the offence and brief details of the facts constituting the offence which the accused is alleged to have committed.

Date.

The date if not the essence of the fact may be described as “on or about” or “between certain dates.”

Place.

The place, if not the essence of the offence, may in case of doubt be described as “near” or “in the vicinity of” or “between ‘X’ and ‘Y.’”

Values.

If the offence has occasioned any expense, loss, damage or destruction for which a Court-Martial may award a deduction from the pay of a soldier under S. 138 (3) or (4), the value of such damage or loss must be stated in the particulars of the charge. These amounts should be assessed in accordance with K.R. 657 or, in the case of loss of public clothing, etc., in accordance with K.R. 655.

Alternative charges.

Where the facts of a single transaction disclose a greater or lesser offence, the lesser offence may be made the subject of an alternative offence. In these circumstances the word “alternative” must be inserted in the margin of the charge sheet.

Alternative charges will not be framed in any case where the Court has power to bring in an alternative finding in respect of such alternative offence, for example :—

- (1) An accused charged before a Court-Martial with stealing may be found guilty of embezzlement or of fraudulently misapplying property.
- (2) An accused charged before a Court-Martial with embezzlement may be found guilty of stealing or fraudulently misapplying property.
- (3) An accused charged before a Court-Martial with desertion may be found guilty of attempting to desert or of being absent without leave.
- (4) An accused charged before a Court-Martial with attempting to desert may be found guilty of desertion or of being absent without leave.
- (4A) An accused charged before a Court-Martial with striking may be found guilty of offering violence.
- (4B) An accused charged before a Court-Martial with using violence may be found guilty of offering violence.
- (4C) An accused charged before a Court-Martial with using threatening language may be found guilty of using insubordinate language.

- (5) An accused charged before a Court-Martial with any offence under this Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.
- (6) Where an accused is charged before a Court-Martial with a civil offence and the charge is one upon which, if he had been tried by a civil court in England for such an offence committed in England, he might have been found guilty of any other offence, the Court-Martial shall have power to find him guilty of that offence.
- (7) Where the charge is under S. 41 (committing a civil offence) upon which an accused person, if tried by a civil Court, could be found guilty of certain other offences, for example :—

Murder . . . manslaughter.

Assault occasioning actual bodily harm . . . common assault.

Burglary . . . larceny in dwelling-house to the value of £5, or house-breaking.

Indecent assault . . . common assault.

Robbery with violence . . . robbery, assault with intent to rob, larceny.

Wounding with intent to murder . . . unlawful wounding.

Unlawful wounding . . . common assault.

Any felony or misdemeanour . . . attempt to commit same.

Stealing motor vehicle . . . taking without owner's consent (provided the stealing is laid as a civil offence under S. 41 and not under S. 17 or S. 18).

For further examples see pages 130 to 134, M.M.L.

Order of alternative charges.

If there are one or more alternative charges the most serious should be placed first on the charge sheet. *R.P. 35, note 6.*

Minor charges.

In cases where the accused is to be tried on a serious charge, minor charges should be dropped. *K.R. 661.*

As a rule, a minor charge should not be added to a serious charge if the minor charge would not otherwise have been tried by Court-Martial. *K.R. 661.*

Marginal notes.

The margin of the charge sheet should contain :—

(1) The number of the charge in red.

(2) The section of the Army Act under which the charge is preferred.

(3) If an alternative charge, then the words "Alternative charge" must be added.

Signature of Charge Sheet.

The charge sheet must be signed by the officer in *actual command* of the unit to which the accused belongs or is attached. *R.P. 11, note 1.*

The date and place must be shown.

Endorsement.

If trial by District Court-Martial is ordered, the charge sheet should be endorsed "To be tried by District Court-Martial."

The endorsement must be signed by the Convening Officer or by an officer "for" him.

For specimen charges see pages 715-735, M.M.L.

## CHARGE SHEET.

The accused, No. 1234567 Private Thomas Hardy  
ATKINS, 1st Battalion West Surrey Regt., a soldier of  
the regular forces, is charged with:—

### DESERTING HIS MAJESTY'S SERVICE

1st Charge

Section 12

(1) (a)\*

Army Act.

in that he

at Mudhampton, Blankshire, on the 12th July, 1939,  
absented himself from his unit until apprehended by  
the civil power at King's Cross, London, on the  
12th August, 1939.

### LOSING BY NEGLECT PUBLIC PROPERTY

2nd Charge

Section 24

(2)\*

Army Act.

ISSUED TO HIM FOR HIS USE

in that he

at Mudhampton, Blankshire, on the 14th August, 1939,  
was deficient of the following items of public  
clothing issued to him for his use:—

1 Greatcoat

1 Mess tin strap

value £1. 10. 4.

**P. JONES,**

Mudhampton,

18th August, 1939.

Lt.-Col.

O.C., 1st Bn. West Surrey Regt.

TO BE TRIED BY DISTRICT COURT-MARTIAL.

**A. CLARK,**

Capt.,

Staff Captain,

for O.C. 438th Infantry Brigade.

20th August, 1939.

\* To be inserted (in Red).



## A.F. B 296.

This document must be attached to Form B 116 (Application for Court-Martial) (see p. 47).

This document must also be produced at the Court-Martial if the accused is found "Guilty" (see p. 93).

### NOTES ON COMPLETION.

(1) Here insert number, rank, full name (Acting, Lance, Temporary rank must be shown).

(2) Here insert unit; if attached, insert the words "attached to" and name of unit to which attached.

(3) Delete where inapplicable.

(4) Fill in these columns from accused's Conduct Sheet (see marginal notes).

If one of the charges for which the accused is to be tried is "drunkenness," then each entry on the accused's charge sheet for drunkenness must be stated separately and dated.

In order that all important classes of offences may be recorded, extra lines can be added as required; minor irregularities may be grouped under one head as "Miscellaneous."

In all cases, however, offences of the same class as that for which the accused is now being tried must be shown separately.

If no documents are available, insert "No documents available." If documents are subsequently available, this part of the form can be completed prior to trial.

The case under trial is not to be included.

(5) Rule through and initial lines not utilised.

(6) }  
(7) } Delete if inapplicable, and initial.  
(8) }  
(9) }

## STATEMENT AS TO CHARACTER AND PARTICULARS OF SERVICE OF ACCUSED.

(1) ..... of the ..... (2)

NOTE.—The Regimental and Squadron, Battery or Company Conduct Sheets are to be produced in Court with this statement but are not to be annexed to the proceedings.

1. The following is a fair and true summary of the entries in the Regimental and Squadron, (3) Battery or Company Conduct Sheets† of the accused, exclusive of convictions by a Court-Martial or a civil Court, of summary awards under Section 47 of the Army Act, and of cases in which trial has been dispensed with :—

†See Para. 677, K.R., 1940.

\*The numbers herein stated should correspond with the number of *Entries* in the Conduct Sheets, prominence being given to the most serious offence in each entry, and to any recognised special acts of gallantry or distinguished conduct.

\*Within last  
12 months.

\*Since  
Enlistment.

For ..... (4) ..... times ..... (4) ..... times.

For ..... (5) ..... times ..... (5) ..... times.

For ..... times ..... times.

For ..... times ..... times.

For ..... times ..... times.

(6) Number of instances of gallantry or distinguished conduct,

or,

(7) There are no entries in the Conduct Sheets of the accused.

(8) 2. The accused has not been previously convicted,

or,

(9) Previous convictions† of the accused by a Court-Martial or a civil Court, summary awards under Section 47 of the Army Act, and dispensations with trial under Section 73 of the Army Act, are set out in the Schedule annexed to this statement.

3. The accused is not under sentence at the present time,<sup>(10)</sup>

or,

The accused at the present time is under sentence for.....<sup>(10)</sup>  
.....<sup>(10)</sup> beginning on the.....<sup>(10)</sup> day of.....<sup>(10)</sup>

4. The accused has been in confinement, awaiting trial on the present charges, for  
.....<sup>(11)</sup> days in Civil Custody,  
and.....<sup>(12)</sup> days in Military Custody.

Total.....<sup>(13)</sup> days.  
Of which.....<sup>(14)</sup> days were spent in hospital.

5. The present age of the accused according to his  $\frac{\text{record of service}}{\text{attestation paper}}$ <sup>(21)</sup> is.....<sup>(15)</sup>

6. The date of his  $\frac{\text{commission}}{\text{attestation}}$ <sup>(21)</sup> specified in his  $\frac{\text{record of service}}{\text{attestation paper}}$ <sup>(21)</sup> is.....<sup>(16)</sup>

7. The service which the accused is allowed to reckon towards discharge or transfer to the reserve is.....<sup>(17)</sup>

8. The accused is entitled to deferred pay or gratuity in respect of.....<sup>(18)</sup> years' service.

9. The accused is entitled to reckon.....<sup>(19)</sup> years' service for the purpose of determining his pension, etc.

10. The accused is in possession of, or entitled to, no military decoration or military reward [or is in possession of or entitled to <sup>(20)</sup>

]

11. (*If the accused is a warrant officer.*) The accused before he was made a warrant officer last held the regimental rank of

12. (*In the case of an officer.*) The accused holds in the army the rank of  
, dated , and in his regiment (or corps  
or department) the rank of <sup>(21)</sup> dated.

13. The accused has served as a non-commissioned officer continuously, without reduction, to the present date,

<sup>(22)</sup>

Date of Promotion.

In the rank of , years,  
In the rank of , years,  
In the rank of , years,

(INSTRUCTION.—*If any matter in any of the above paragraphs cannot be stated from the regimental books the paragraph must be struck through.*)

The above statement (with the schedule of convictions and of cases in which trial has been dispensed with) is read, marked.....<sup>(23)</sup>, signed by the President, and annexed to the proceedings.



(10) Delete first line and/or complete as applicable.

(11)  
(12)  
(13)  
(14)  
(15)  
(16)  
(17)  
(18)  
(19)

When this form is forwarded with an application for trial by Court-Martial, these entries should be made in pencil. As this form is produced as a record of service of the accused at the trial on a conviction, these entries should be made up to date and then inked in on the day the form is produced.

With regard to (12) and (13) (days in military custody) this should be shown as  
.....days in military custody (close arrest).  
.....days in military custody (open arrest).

Total .....days.

NOTE.—The days on which a Summary of Evidence is taken and the days of the trial are days of close arrest.

(15)  
(17)  
(18)

should be shown as  $x$  years,  $y$  days.

(20) " Decoration " means any medal, clasp, good conduct badge or decoration. S. 190 (18).

Military reward means any gratuity or annuity for long service or good conduct ; it also includes any good conduct pay or pension and any other military pecuniary reward. S. 190 (19).

(21) Relates only to an officer and therefore not applicable to a trial by District Court-Martial.

(22) Applicable only to non-commissioned officers and warrant officers.

(23) This is completed only if the document is produced at the trial.

**NOTES ON A.F. B 296 (Pages 3 and 4).**

- (1) }  
      } Whether there are convictions or not, these should be completed.  
(2) }

(3) All convictions since first enlistment, whether by Court-Martial or civil Court, will be shown.

An entry of a civil conviction, if challenged, will be proved by the production of the certificate referred to in A.A., S. 164.

(4) The form must be completed to date, and signed and dated on the day it is actually produced to the Court.

NOTE.—A trial may last several days and it must be completed up to and signed and dated on the last day of the trial.

The officer who signs it must be the officer *who is in actual custody of the regimental books*. He must initial all alterations.

NOTE.—The officer in actual custody of the regimental books is not necessarily the Commanding Officer or the Adjutant.

**Schedule of Convictions by a Court-Martial or Civil Court, of summary awards under Section 47 of the Army Act, and of Cases in which Trial has been dispensed with.**

(1) Army Number, Rank and Name of the

(2)

NOTE.---A verbatim extract from the regimental books, stating these convictions and dispensations with trial, must be inserted.

[illegible]

I HEREBY CERTIFY that the foregoing Schedule of convictions and dispensations with trial is a true extract from the regimental books in my custody.

Signed this \_\_\_\_\_ day of \_\_\_\_\_ (4)



## DELAY IN APPLICATION FOR COURT-MARTIAL.

. . . in every case where an officer or soldier not on active service remains in such military custody for a period longer than eight days without a Court-Martial for his trial being assembled, a special report of the necessity for the further delay shall be made by his Commanding Officer in the manner prescribed, and a similar report shall be forwarded every eight days until a Court-Martial is assembled or the officer or soldier is released from custody. *S. 45 (1).*

The special report . . . required under *S. 45* shall be made by means of a letter from the Commanding Officer . . . to the officer to whom application would be made to convene a Court-Martial for the trial of that officer or soldier. *R.P. 1.*

Any report or application directed by these rules to be made to a superior authority, or proper military authority, shall be made in writing through the proper channel unless the authority, on account of military exigencies or otherwise, dispenses with the writing. *R.P. 135 (B).*

### NOTES.

1. Under *R.P. 135 (B)* above, the report could be made orally, by signal or by telephone.
2. Sunday, Good Friday and Christmas Day are to be included in reckoning the eight days.

## DELAY CERTIFICATE.

### PRECEDENT.

From 1st West Surrey Regt.

To 408th Brigade

1234567 Private T. Atkins - 1st West Surrey Regt.

The above mentioned was placed in military custody at.....on.....on the following charges :—

\* Brief particulars of charge, as applicable.

(Stealing a bicycle.)\*

(Striking a sergeant.)\*

(Desertion.)\*

Etc. Etc.

An application for Court-Martial has not been forwarded for the following reasons :—

† As applicable.

(Accused in hospital and no summary of evidence yet taken.)†

(Owner of stolen property unable to attend to identify property.)†

(N.C.O. struck still in hospital and unable to give evidence or make statement.)†

(Form O 1618 not received from police.)†

I hope to forward necessary application within.....days.

Place.....

Date .....

.....  
O.C. 1st West Surrey Regt.

## **SUBMISSION OF CASES TO THE JUDGE-ADVOCATE-GENERAL BEFORE TRIAL.**

The following cases must be submitted to the Judge-Advocate-General for advice before trial :—

- (a) Cases of alleged fraud or neglect.
- (b) Cases of alleged indecency.
- (c) Cases of any description in which doubt or difficulty is experienced. *K.R.* 659.
- (d) Cases under S. 29 A.A. (perjury).

### **METHOD OF SUBMISSION.**

The following documents should be forwarded :—

- (a) Copy of charge sheet or charge sheets.
- (b) Original and two typed copies of the Summary of Evidence; any additional Summary of Evidence or statements of further evidence.
- (c) All documentary exhibits.
- (d) A covering minute giving a short precis of the case; information not contained in the Summary of Evidence and an explanation as to the absence of any evidence which would normally be expected and as to the steps which have been taken to obtain it.

### **NOTIFICATION TO ACCUSED IN CASES WHERE THE PROSECUTOR IS AN OFFICER WITH LEGAL QUALIFICATIONS.**

If the convening officer intends to appoint as prosecutor an officer with legal qualifications or to avail himself of the services of an officer with legal qualifications from the Department of the Judge-Advocate-General, the accused must be informed of such intention not less than seven days before the day fixed for the trial, in order that the accused may obtain counsel to represent him at the trial. *R.P.* 89 (B) and *note*.



## CONVENING A DISTRICT COURT-MARTIAL.

**Power to convene.** The Convening Officer must be in possession of the necessary warrant to convene a District Court-Martial.

**Composition of Court.** A District Court-Martial must consist of not less than three officers, each of whom must have held a commission during not less than two whole years. *S. 48 (4).*

**Ranks.** If the Court consists of the three officers (the minimum number) not more than one member should be a subaltern. *K.R. 672.*

**President.** The president shall not be under the rank of field officer, unless in the opinion of the officer who convenes the Court, having due regard to public service, no officer of the rank of field officer is available. *S. 48 (9).*

**Regiment or Corps.** A Court-Martial shall as far as possible be composed of officers of different corps, and in no case shall it be composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery or the same battalion of infantry, unless in the opinion of the convening officer other officers are not available. *R.P. 20 (4).*

**Officers disqualified to sit.** The following officers are disqualified from sitting on a Court-Martial:—

- (1) If he is the officer who convened the Court; or
- (2) if he is the prosecutor or witness for the prosecution; or
- (3) if he investigated the charge before trial; or
- (4) if he took the Summary of Evidence, or was a member of the Court of Inquiry or a member of a previous Court-Martial in respect of the same offence;
- (5) if he is the Commanding Officer of the accused, or of the corps or battalion to which the accused belongs; or
- (6) if he has a personal interest in the case. *R.P. 19 and note.*

*Note.*—An officer is not eligible for serving on a Court-Martial unless he is subject to Military Law or is otherwise qualified to serve under the provisions of *S. 48 (10)* (which relates to using the service of naval and Air Force officers for Courts-Martial).

**Air Force officers.** Air Force officers attached or lent to or seconded for service with the Army may serve as members of a Court-Martial. *S. 48, note 3. S. 175.*

**Chaplains.** A chaplain may serve as a member of a Court-Martial, provided he holds a commission, but he cannot sit as president. *S. 48, note 3.*

**Trial of member of Territorial Army, etc.** If the accused is a member of the Territorial Army or Supplementary Reserve, one of the members of the Court should be an officer of the Territorial Army or Supplementary Reserve unless, in the opinion of the convening officer, such a member is not available. *R.P. 20, note 2.*

**Utilising services of officers of another command.** If a Convening Officer finds it necessary to avail himself of officers from another command, he should apply to the command concerned, for the names and units of the officers to compose the Court, and these names should be inserted in the convening order. The command furnishing the officers should then insert in their orders an order to the following effect:—

“The undermentioned officers have been placed at the disposal of the Commander, ‘X’ Brigade (or as the case may be) for duty at a Court-Martial to assemble at (place) on (date). *R.P. 20, note 1.*”

(A copy of this order need not be attached to the Court-Martial proceedings.)

## CONVENING ORDER.

(See also notes at foot of A.F. A 47.)

Copy for each trial.

If the Convening Order is for a Court to try more than one accused, one copy must be made out in respect of each accused to be tried.

Notes on completion of form.

- (1) Delete as applicable.
- (2) Insert "Brigade," "Division," "Garrison," as applicable.
- (3) Insert rank and name of Convening Officer, and
- (4) Unit that the Convening Officer commands.
- (5) Insert here name of station, camp, etc., where the trial is to take place.

If, in the opinion of the Convening Officer, a Court-Martial could be more conveniently held at a place other than that where the accused is, he may cause the Court to be convened at any place within his command. If he desires the case to be tried at a place beyond his command, for procedure see K.R. 665.

(6) Here insert date and time.

(7) Here insert "District."

(8) Delete as applicable.

(9) Here insert a special certificate in the following cases :—

- (a) Where an officer of the prescribed rank is not available as President [see A.A. 48 (9)]; or
- (b) Where, for the trial of an officer, officers of equal or superior rank to the accused are not available [see R.P. 21 (B)] (not applicable to a District Court-Martial); or
- (c) Where it is not practicable for a Court-Martial to be composed of officers belonging to different corps [see R.P. 20 (A)]; or
- (d) Where the necessary number of military officers is not, or could not be made, available [see A.A. 48 (10)]; or
- (e) Where it is not practicable to appoint an officer of the Supplementary Reserve or of the Territorial Army to serve on a Court-Martial for the trial of an offender belonging to those branches of the Service respectively [see R.P. 20 (B)].

For forms of certificate see notes at foot of A.F. A 47.

(10) The President must be named, and his unit inserted.

(11) Here insert the ranks, names and units of officers to compose the Court.

If it is not proposed to insert their names they may be detailed as follows :—

"One Captain to be detailed by the O.C. 3rd Surrey Rifles," or

"One Lieutenant to be detailed by the O.C. 4th North Kent Regt."

(12) Here insert the rank and name of the Waiting Member, or

"One Captain to be detailed by the O.C. 5th Suffolk Rifles."

NOTE.—A Captain should normally be detailed as the Waiting Member for the reason that if the Captain detailed as member of the Court were objected to or found to be disqualified, and his place were taken by the Waiting Member, then if the Waiting Member were a subaltern the members of the Court would include two subaltern officers, which is contrary to K.R. 672.

(13) Here insert the name of the Judge-Advocate.

In the United Kingdom the appointment of a Judge-Advocate is made by the Judge-Advocate General. R.P. 101.

Outside the United Kingdom, the Judge-Advocate is appointed by the Convening Officer.

(14) The Convening Order must be signed by the Convening Officer himself or "for" him by a staff officer or by a staff officer as such. R.P. 22, note 4.

(15) Here insert in the margin the number, rank, name, unit of the accused. This description must correspond with the description of the accused as contained in the charge sheet.

### REVERSE OF A.F. A 47.

A list of witnesses required to attend at the trial should be entered on the reverse of the Convening Order.

# COURTS-MARTIAL.

Form of Order for the assembly of a General or District Court-Martial.<sup>(1)</sup>

Brigade<sup>(2)</sup> ORDERS BY Brigadier A. B. Howitzer, D.S.O., M.C.<sup>(3)</sup>

Commanding the 438th Infantry Brigade<sup>(4)</sup>

(Place and Date) Mudhampton, 14th August, 1939.

The detail of officers as mentioned below will assemble at Delhi Barracks, Mudhampton,<sup>(5)</sup> on the 18th day of August, 1939, at 1000 hours<sup>(6)</sup> for the purpose of trying by a District<sup>(7)</sup> Court-Martial the accused person [persons]<sup>(8)</sup> named in the margin [and such other person or persons as may be brought before them.]<sup>(9)</sup>\*

## PRESIDENT.

No. 1234567<sup>(15)</sup>  
Private Thomas  
Henry Atkins,  
1st West Surrey  
Regiment.

Major A. B. Lewis, 1st Royal Essex Fusiliers,<sup>(10)</sup>  
is appointed President.†

## MEMBERS.

Captain C. B. Vickers, 3rd Sussex Rifles.<sup>(11)</sup>

Lieut. E. F. Bren, 4th North Kent Regt.

NOTE.—The President must be named. The Members and the Waiting Members may be mentioned by name, or the number and rank and the unit to which they belong may alone be named.

## WAITING MEMBERS.

Captain G. H. Hotchkiss, 5th Suffolk Rifles.<sup>(12)</sup>

## JUDGE-ADVOCATE.

Major J. K. Court, Barrister-at-Law, Office of the Judge-Advocate General,<sup>(13)</sup> has been [or where the convening officer has the appointment of a judge-advocate, is hereby] appointed judge-advocate.

The accused will be warned and all witnesses duly required to attend.

The proceedings will be forwarded to The Staff Captain, HQRS., 438th Infantry Brigade.

Signed this 14th day of August, 19 39.

A. JONES, Captain,<sup>(14)</sup>

Staff Captain,

for O.C., 438th Infantry Brigade.

\* Any opinion of the Convening Officer with respect to the composition of the Court [see Army Act, S. 48 (10) and Rules of Procedure, 20 and 21] should be added here; thus, where a Court-Martial is ordered to assemble, composed exclusively of officers of the same regiment of cavalry, or the same brigade of artillery, or the same battalion of infantry, the following should be added:—

“In the opinion of the Convening Officer, other officers are not, having due regard to the public service, available” (or as the case may be).

† Add here, in the case of either a General or District Court-Martial where a Captain is appointed President and the officer convening the Court is not under the rank of field officer, “In the opinion of the convening officer a field officer is not, having due regard to the public service, available.” Where it is necessary for an officer under the rank of Captain to be appointed President of a District Court-Martial, add: “In the opinion of the convening officer a field officer or Captain is not, having due regard to the public service, available.” See Army Act, S. 48 (9).

‡ The “unit,” in the case of Royal Artillery, is a Brigade, where such organization exists.



## SUBPŒNA TO WITNESS TO ATTEND TO GIVE EVIDENCE AT COURT-MARTIAL.

Authority.

A civilian may be subpœnaed to attend to give evidence at a Court-Martial.  
*R.P. 78 (B).*

See page 24 as to notes on subpœna and manner of service.

Signature of  
Subpœna.

In the case of a subpœna for the attendance of a civilian as a witness at a Court-Martial, the subpœna must be signed by the Convening Officer or, if the Court is already sitting, by the *Judge-Advocate* or *President of the Court*.

Army Form A 13.

Form of Subpœna.

FORM OF SUMMONS TO A WITNESS IN THE CASE OF A COURT-MARTIAL.

*To*

WHEREAS a Court-Martial has been ordered to assemble  
at on the day of 19 ,  
for the trial of  
of the Regiment,

I do hereby summon and require you

to attend, as a witness, the sitting  
of the said Court at on the  
day of at o'clock in the forenoon [and  
to bring with you the documents hereinafter mentioned, namely, ]  
and so to attend from day to day until you shall be duly discharged; whereof you shall  
fail at your peril.

Given under my hand at on the day of

19 .

Signature .....

Convening Officer [or Judge-Advocate, or President of the Court].

## SPECIMEN BRIGADE ORDER FOR ASSEMBLY OF A COURT-MARTIAL.

### DISTRICT COURT-MARTIAL.

The details of officers mentioned below will assemble at (place).....at.....a.m. on.....(day) the.....day of.....for the purpose of trying by District Court-Martial the undermentioned accused person and such other persons as may be brought before them :—

No. 1234567 Pte. Thomas Atkins, 1st West Surrey Regt.

#### President.

Major A. B. Lewis, 1st R. Essex Fusiliers

#### Members.

Captain C. D. Vickers, 3rd Sussex Rifles.

Lieut. E. F. Bren, 4th North Kent Regt.

#### Waiting Members.

Captain G. H. Hotchkiss, 5th Suffolk Rifles.

#### Judge-Advocate.

Major J. K. Court, Barrister-at-Law, Office of the  
Judge-Advocate General.

The accused will be duly warned and medically examined and all witnesses directed to attend.

The Officer Commanding .....(Unit) will provide suitable accommodation for the assembly of the Court and will provide the necessary books and stationery.

The Officer Commanding .....(Unit) will detail an N.C.O., not below the rank of serjeant as Court orderly.

The proceedings will be forwarded to Headquarters ("X" Brigade) marked "Confidential."

## CONVENING OFFICER'S RESPONSIBILITY FOR DELIVERING THE FOLLOWING DOCUMENTS.

(1) *To the President.*

- (a) Convening order. (A.F. A 47.)
- (b) Charge sheet(s).
- (c) Original Summary of Evidence, original additional summaries and any original statements made under R.P. 76.
- (d) Original documentary exhibits.

(2) *To the Judge-Advocate.*

- (a) Convening order. (A.F. A 47.)
- (b) Charge sheet(s).
- (c) Copy of Summary of Evidence, additional summaries and statements made under R.P. 76.
- (d) Copies of documentary exhibits (*if available*).

(3) *To the Prosecutor.*

- (a) Convening order. (A.F. A 47.)
- (b) Charge sheet.
- (c) Copies of Summary of Evidence, additional summaries and statements made under R.P. 76.
- (d) Copies of documentary exhibits (*if available*).
- (e) Any directions that have been issued by the Convening Officer or from the office of the Judge-Advocate-General with regard to the trial.

(4) *To the Accused's Unit.*

- (a) Convening order. (A.F. A 47.)
  - (b) Charge sheet.
  - (c) Copy of Summary of Evidence, additional summary, etc.
  - (d) Copies of documentary exhibits (*if available*).
- } for delivery to the accused (the Summary of Evidence should be delivered to the accused when taken).
- (e) A.F. B 120 and A.F. 121—for retention by Unit.
  - (f) A.F. B 296—to be completed by the Unit up to and including the date on which it is produced before the Court, and to be handed to the Prosecutor. *Under no circumstances should this document be handed to the President or a member of the Court before the trial.*



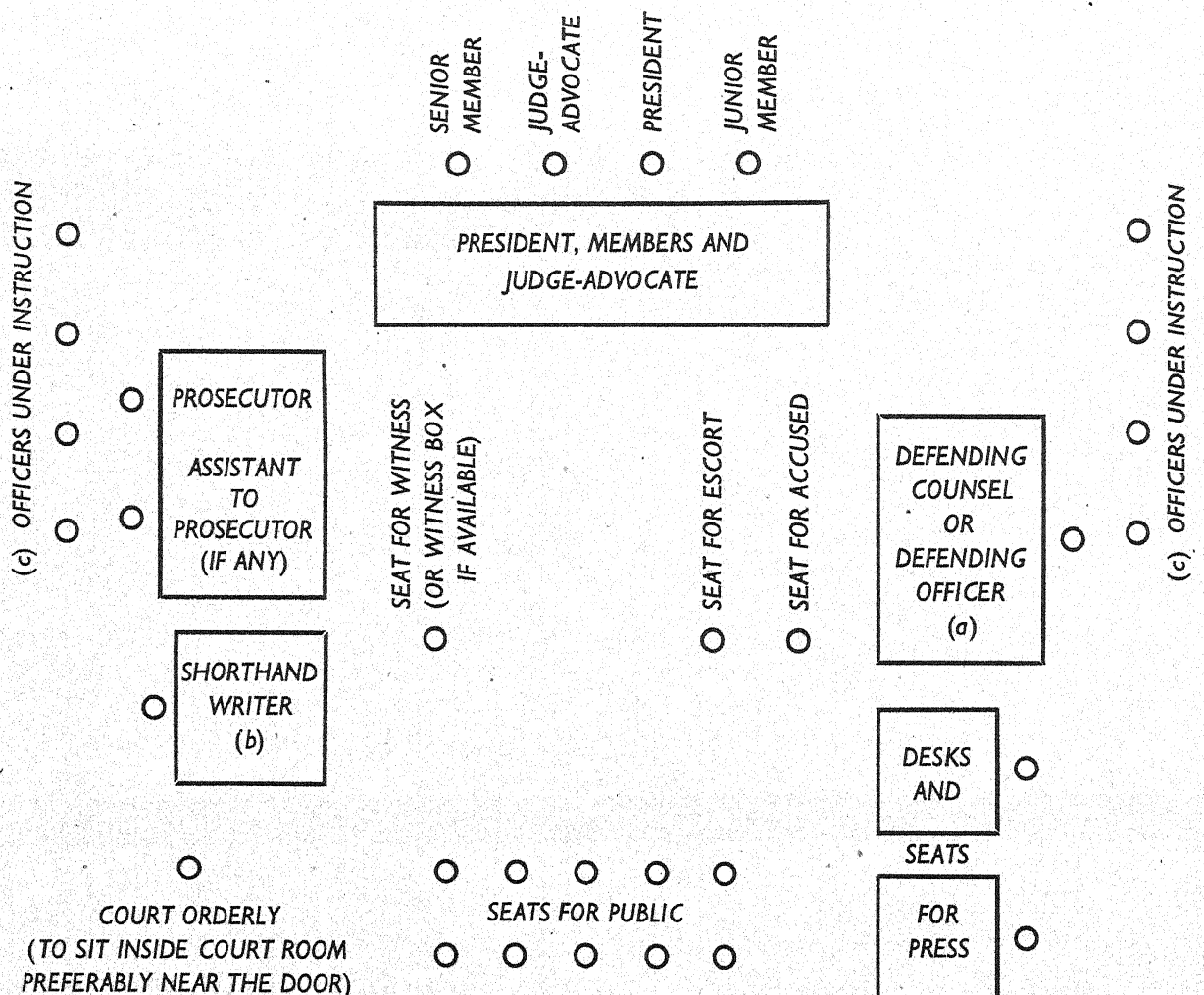
## MATTERS WITH REGARD TO THE ACCUSED BEFORE TRIAL.

The Commanding Officer of the accused is responsible before trial that :—

- (a) The accused has had every opportunity to prepare his defence, and that he has been allowed free communication with his witnesses, with any friend, defending officer or legal adviser with whom he may wish to consult. *R.P. 14 (A).*
- (b) That an officer has supplied the accused gratis a copy of the Summary of Evidence [or, in the case of an officer where there is no Summary of Evidence, an abstract of evidence] and has explained to him his rights under these rules as to preparing his defence. *R.P. 14 (B).*
- (c) That the accused has been given
  - (1) a copy of the charge sheet; and, where the accused is a soldier, that the charge sheet has been explained to him. *R.P. 15 (B).*
  - (2) a list of the ranks, names and corps (if any) of the president and officers who are to form the Court and, where officers in waiting are named, particulars of those officers. *R.P. 15 (C).*
- (d) Where the accused person is to be charged jointly with others, that his right to claim to be tried separately has been explained, except when the charges are those of mutiny or conspiracy. *R.P. 16.*
- (e) That if the accused has supplied a copy of the names of the witnesses he desires to call, steps have been taken to procure their attendance at the trial. *R.P. 15 (A).*
- (f) The accused is medically examined on the morning of the trial and he is certified by the Medical Officer to be fit to undergo his trial. If the trial lasts for more than one day, the accused must be medically examined on *each* day of the trial.

# DIAGRAM

SHOWING A SUITABLE LAYOUT OF ROOM  
FOR A DISTRICT COURT-MARTIAL



NOTES :—(a) Additional seating accommodation for the defence to be provided when necessitated by the joint trial of more than one accused.

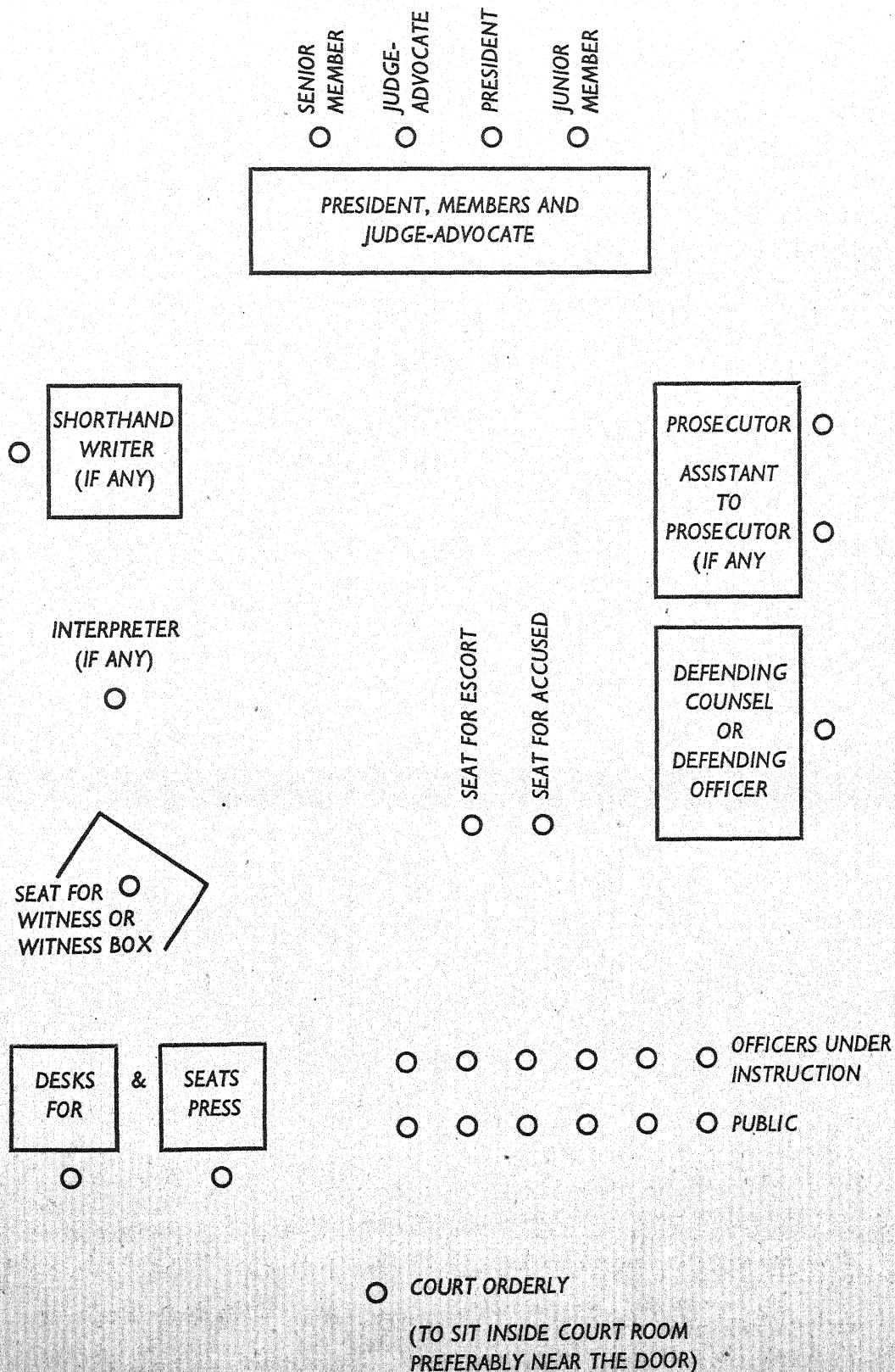
(b) The seat for the shorthand writer should be as near as possible in a line with the witness box, but not behind the witness.

(c) Officers under instruction should not be accommodated behind the president and members when this arrangement can be avoided.

# DIAGRAM

SHOWING A SUITABLE LAYOUT OF ROOM

FOR A DISTRICT COURT-MARTIAL





# COURT-MARTIAL PROCEEDINGS.

Preliminary  
Proceedings.

The following preliminary proceedings are in private or "closed Court." *R.P. 22, note 1.*

The following should be present: The President, the Judge-Advocate, the Members, the officers under instruction.

The proceedings of a Court-Martial are recorded on Army Form A 9. (See opposite page.)

## NOTES ON PAGE A, A.F. A 9

Form of Record.

- (1) Here insert "District."
- (2) Here insert place of trial.
- (3) Here insert date of trial.
- (4) Here insert name of Convening Officer.
- (5) Here insert date of Convening Order.
- (6) Here insert rank, name and unit of President. (This must correspond with the Convening Order.)
- (7) and (8) Here insert ranks, names and units of Members, which must correspond with those appearing in the Convening Order. If the Members have not been detailed by name, but by rank and unit, their names must be inserted here, and their rank and unit must correspond with the Convening Order.
- (9) Here insert name of Judge-Advocate (if any). If none appointed delete words "Judge-Advocate" and initial.
- (10) Here insert number, rank, full name and unit of accused. (Temporary, Acting, etc., rank should be inserted in brackets.)
- (11) and (12) If a Member is not available, here insert his name and reason.
- (13) Here insert the rank, name and unit of the Waiting Member who takes his place, or delete and initial.

- (14) Rules of Procedure 22 and 23 are as follows:—

22.—(a) On the Court assembling, the order convening the Court shall be laid before them together with the charge sheet and the Summary or Abstract of Evidence or a true copy thereof, and also the ranks, names and corps of the officers appointed to serve on the Court; and it shall be the first duty of the Court to satisfy themselves that the Court is legally constituted; that is to say—

- (i) That so far as the Court can ascertain, the Court has been convened in accordance with the Army Act, and these rules;
- (ii) That the Court consists of a number of officers not less than the legal minimum, and, save as mentioned in Rule 18, not less than the number detailed;
- (iii) That each of the officers so assembled is eligible and not disqualified for serving on that Court-Martial;
- (iv) That the President is of the required rank and duly appointed; and
- (v) In the case of a General Court-Martial, that the officers are of the required rank.

(b) The Court should further, if a Judge-Advocate has been appointed, ascertain that the Judge-Advocate is duly appointed, and is not disqualified for acting at that Court-Martial.

(c) The Court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

23. (a) The Court, when satisfied on the above matters, should satisfy themselves in respect of each charge about to be brought before them—

- (i) That it appears to be laid against a person amenable to Military Law, and to the jurisdiction of the Court; and
- (ii) That each charge discloses an offence under the Army Act, and is framed in accordance with these rules, and is so explicit as to enable the accused readily to understand what he has to answer.

(b) The Court, if not satisfied on the above matters, should report their opinion to the convening authority, and may adjourn for that purpose.

Opening of Court.

(15) The Court should now be "opened." The prosecutor and defending officer (or counsel) should take their place, and the accused and escort be marched before the Court. The accused should be deprived of his cap or any object which he might use as a missile. The shorthand writer, and interpreter (if any) take their place. The witnesses should be marched in. [Note—It is not essential that all the witnesses be present.] The public and the Press may be admitted.

(16) Insert rank, name and unit of prosecutor.

(17) Insert rank, name and unit of defending officer.

If counsel appears for the accused, insert name, address and professional qualification—i.e., "Barrister-at-Law" or "Solicitor."

NOTE.—If a Barrister or Solicitor appears before a Court-Martial he should appear robed.

(18) Here insert time of commencement of trial.

(19) The Convening Order is usually read by the Judge-Advocate, or in the absence of a Judge-Advocate, then by the President. *R.P. 25 (A).*

(20) Here insert the letter "G" and mark the Convening Order "G" and sign the Convening Order "H. Brown, Major, President D.C.M."

[NOTE.—The Convening Order is marked "G" as the pages of Form A 9 are lettered "A" to "F," and the Convening Order is the first attachment.]

(21) These will be read by the Judge-Advocate (if present). If not, then by the President.

For further notes on completion of Page A see pages 72 and 73.

# A

## FORM OF PROCEEDINGS FOR GENERAL AND DISTRICT COURTS-MARTIAL

\*\*All printed matter not applicable to the particular Court being held should be struck out and initialled by the President.

Proceedings of a (1) Court-Martial held at (2)  
on the (3) day of (3) 19 by order of

(4)

Commanding

dated the (5) day of (5) 19

President.

(6)

Members.

(7)

(8)

(9)

, Judge-Advocate.

Trial of\* (10)

The order convening the Court, the charge sheet and the Summary (or Abstract) of Evidence are laid before the Court.

The Court satisfy themselves that (11) is not available to serve owing to (12)

(13), Waiting Member, takes his place as a Member of the Court.

The Court satisfy themselves as provided by Rules of Procedure 22 and 23. (14)

(15) The accused is brought before the Court.

(16) Prosecutor†,

(17) Counsel‡ or defending officer†

At (18) o'clock the Trial commences.

(19) The order convening the Court is read, and is marked (20) signed by the President, and attached to the proceedings.

(21) The names of the President and Members of the Court are read over in the hearing of the accused, and they severally answer to their names.

(22)

(23) Do you object to be tried by me as President, or by any of the officers whose names you have heard read over? Answer. (24)

Question by the President to the Accused.

(N.B.—If objection is made it should be recorded, together with the decision of the Court, on a separate sheet.)

\* Here insert number, rank, full name, regiment, and appointment (if any).

† Here state rank, name and regiment (if any).

‡ Qualification to be stated.



## NOTES ON PAGE A, A.F. A 9 (continued)

Procedure where Court of Inquiry has been held.

(22) If a Court of Inquiry has been held respecting the matter on which the accused appears before the Court, the prosecutor should hand to the Court a list of the officers who comprised the Court of Inquiry. It is convenient for the prosecutor to do this at this stage of the proceedings. The President should compare this list with the names of the officers comprising the Court and add an asterisk after the words "Rules of Procedure 22 and 23" and enter in red ink and sign a footnote at the bottom of page "A" as follows:—

"I have satisfied myself that none of the officers detailed as Members of this Court have previously served upon any Court of Inquiry respecting the matters forming the subject of the charge (charges) before this Court-Martial."

.....  
*Signature of President.*

(23) This question must be asked by the President.

(24) If the answer is "No," here insert "No." If the answer is "Yes," insert: "I object to . . . (rank, name and unit of officer objected to)."

NOTE.—The accused cannot object to the Judge-Advocate, Prosecutor, or Officers under Instruction.

The following question should then be put to the accused:—

"Do you object to any other person?"

(This question must be repeated until all the objections are ascertained.)

Procedure to deal with Objections. R.P. 25.

If the President is objected to, this objection is dealt with first.

If no objection to President, and there are objections to more than one officer, objection to lowest rank will be dealt with first.

The accused—

(a) Must state the reasons for the objection.

(b) May make a statement himself and call persons to make statements in support of the objection. (This is not on oath as the Court has not been sworn.)

(c) The accused may question any persons making statements.

(d) The Court may question any persons making statements.

The Court should then be closed and all the officers of the Court (other than the officer objected to) shall declare their opinions on the objection and either uphold the objection or dismiss it.

If the President is objected to and the objection upheld the Court must adjourn and report to the Convening Officer.

If a Member is objected to and the objection upheld the President should appoint the Waiting Member to fill the vacancy. If no Waiting Member is available the Court must adjourn. The Court must satisfy themselves that the new Member is eligible and not disqualified. R.P. 22 and 23.

Method of recording Objection.

If an objection is made it should be recorded, together with the decision of the Court, on separate sheets of foolscap and attached to the proceedings.

Precedents:—

*Objection to the President.*

*Question to accused.*—What is your objection to me as President?

The accused, in support of his objection to the President, makes the following statement (*set out*) [and calls who states (*set out*)].

The Court is closed to consider the objection.

*Decision.*—The Court disallow the objection.

The Court is reopened, and the above decision is made known to the accused.

or,

*Decision.*—The Court allow the objection.

The Court is reopened, and the above decision is made known to the accused and the Court adjourn

*Objection to Member.*

*Question to accused.*—What is your objection to

(*the junior officer objected to*)?

The accused, in support of his objection to , makes the following statement (*set out*) [and calls who states (*set out*)].

The Court is closed to consider the objection.

*Decision.*—The Court disallow the objection.

The Court is reopened and the above decision is made known to the accused.

or,

*Decision.*—The Court allow the decision.

The Court is reopened, and the above decision is made known to the accused.

retires.

\*Insert: Rank, Name,  
Regiment.

*Fresh Member.*—\*

takes his place as a Member of the Court.

(*This only applies where there are Waiting Members of the Court, otherwise the Court must adjourn.*)

He appears to the Court to be eligible and not disqualified to serve on this Court-Martial.

*Question to accused.*—Do you object to be tried by

(*the fresh Member*)?

*Accused.*—

(*If he objects, the objection will be dealt with in the same manner as the former objection.*)

*Question to accused.*—What is your objection to  
*objected to*?)

(*the next junior of the officers*)

The Court adjourn for the purpose of fresh Members being appointed.



**NOTES ON PAGE A, A.F. A 9 (continued)**

or,

The Court is of opinion that, in the interests of justice, and for the good of the service, it is inexpedient to adjourn for the purpose of fresh Members being appointed, because *(here state the reasons)*.

At o'clock on the Court resume their proceedings, and an Order appointing another President *(or fresh officers)* is read, marked and attached to the proceedings.

The Court satisfy themselves with respect to such President *(or officers)* as provided by Rule of Procedure 22.

[Instruction.—*The procedure as to challenging a new President and fresh officers, and the procedure, if any objection is allowed, will be the same as above.*]

The President and Members of the Court as constituted after the above proceedings, are as follows :—

**PRESIDENT.**

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
.....	.....	.....

**MEMBERS.**

<i>Rank.</i>	<i>Name.</i>	<i>Regiment.</i>
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

## NOTES ON PAGE B, A.F. A 9

(1) If no Judge-Advocate present, delete words "Judge-Advocate" and initial.

(2) Order of Swearing. *R.P.* 26.

If Judge-Advocate present, President sworn first, then other Members. President then administers oath to Judge-Advocate.

If no Judge-Advocate, oath administered to Members by President, and then oath administered to President by one of the Members already sworn.

### Form of Oaths.

President and Members :—

I swear by Almighty God that I will well and truly try the accused [or accused persons] before the Court according to the evidence, and that I will duly administer justice according to the Army Act now in force, without partiality, favour or affection, and I do further swear that, except so far as may be permitted by instructions of the Army Council for the purpose of communicating the sentence to the accused, I will not divulge the sentence of the Court until it is duly confirmed, and I do further swear that I will not on any account at any time whatsoever disclose, or discover the vote or opinion of any particular Member of this Court-Martial, unless thereunto required in due course of law.

Judge-Advocate :—

I swear by Almighty God that I will not, unless it is necessary for the due discharge of my official duties, divulge the sentence of this Court-Martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular Member of this Court-Martial, unless thereunto required in due course of law.

(3) **Officers under Instruction.**—Here insert names of officers under instruction. If insufficient room, insert names on foolscap sheet and attach to proceedings.

Form of oath :—

I swear by Almighty God that I will not divulge the sentence of this Court-Martial until it is duly confirmed; and that I will not on any account, at any time whatsoever, disclose or discover the vote or opinion of any particular Member of this Court-Martial unless thereunto required in due course of law.

NOTE.—An accused cannot object to officers under instruction. *R.P.* 27, note 1.

(4) **Shorthand Writer or Interpreter.**—If shorthand writer or interpreter present here insert name and that he has been duly sworn.

Before a shorthand writer or interpreter is sworn, the accused must be informed of his name and he may object to him as not being impartial. Any objection must be dealt with in a similar way to an objection to a Member of the Court.

Oath of shorthand writer :—

I swear by Almighty God that I will truly take down to the best of my power the evidence to be given before this Court-Martial and such other matters as may be required, and will, when required, deliver to the Court a true transcript of the same.

Oath for interpreter :—

I swear by Almighty God that I will to the best of my ability truly interpret and translate, as I shall be required to do, touching the matter before this Court-Martial.

The oath to a shorthand writer or interpreter should be administered by the Judge-Advocate. In the absence of a Judge-Advocate, the oath may be administered by the President or any Member. *R.P.* 27. They may be sworn at any time during the proceedings (*R.P.* 72), but they must be sworn before they commence their duties.

(5) **Charge Sheet.**—The charge sheet must be marked "B 2" and signed "H. Brown, Major, President D.C.M." It must be attached to the proceeding immediately after this page (*i.e.*, page B) of Form A 9.

(6) If the accused has elected to be tried instead of being dealt with summarily by his Commanding Officer, insert here :—

"The prosecutor informs the Court that the accused has elected to be tried by this Court instead of being dealt with summarily by his Commanding Officer."

NOTES.—*Two or more Charge Sheets.*—If there are more than one charge sheet, only the first charge sheet must be attached here, and the proceedings must only relate to this charge sheet. The trial on each charge-sheet must proceed independently. *R.P.* 31.

**Errors in Description of Accused.**—If it appears there is an error in the name or description of the accused, the charge sheet may be amended provided the accused is not prejudiced in his defence as the result of the mistake and it is clear to the Court that the accused is the person intended to be charged. *R.P.* 33.

**Arraignment consists of—**

(a) Calling upon the accused by his number, rank, name and description as given in the charge sheet, and asking him: "Is that your number, rank, name and unit (or description)?"

(b) Reading the charge to him.

(c) Asking him if he is guilty or not guilty. *R.P.* 31.

NOTE.—Arraignment is carried out by the Judge-Advocate (if present) or the President. *R.P.* 31.

The accused must plead in person.

Each charge (including alternative charges) must be read separately. The accused must plead "Guilty" or "Not guilty" to each charge. *R.P.* 31.

If two or more persons are charged jointly they must be arraigned separately (*R.P.* 31) and their pleas entered separately.

*E.g.*, "Are you guilty of the [first] charge against you, which you have heard read?"

1st Accused. Private A. Jones. "Not guilty."

2nd Accused. Private B. Smith. "Not guilty."

For further notes on completion of Page B see pages 76 and 77.

## B

(1) (2)  
The President, Members and Judge-Advocate are duly sworn.

The following officers under instruction are duly sworn.  
(3)

Do you object to (4) as interpreter ?

*Question to accused.*

*Answer.*

Do you object to (4) as shorthand writer ?

*Question.*

*Answer.*

### CHARGE SHEET.

(5)  
The charge sheet is signed by the President, marked B 2  
and annexed to the proceedings.

*Instruction.*  
*If the accused has*  
*elected to be tried under*  
*Army Act, sec. 46 (8)*  
*the fact should be here*  
*recorded.*

(6)

The accused is arraigned upon each charge in the above-mentioned charge sheet.

(7)  
Are you guilty or not guilty of the [first] charge against you, which you have heard read ?

*Question to the accused.*

*Answer.*

(8)  
Are you guilty or not guilty of the second charge against you, which you have heard read ?

*Question.*

*Answer.*

(9)  
Are you guilty or not guilty of the third charge against you, which you have heard read ?

*Question.*

*Answer.*

(10)  
Are you guilty or not guilty of the fourth charge against you, which you have heard read ?

*Question.*

*Answer.*

The accused having pleaded Guilty to (11) charge , the  
provisions of Rule of Procedure 35 (B) are here complied with.

If the trial proceeds upon any charge to which there is a plea of " Not guilty," the Court will not proceed upon the record of a plea of " Guilty," until after the finding on that other charge. *Instruction.*



## NOTES ON PAGE B, A.F. A 9 (continued)

(7) Delete if only one charge and initial.

(8) (9) (10) Delete if unnecessary and initial.

**Alternative Charges.**—If there are alternative charges and the accused pleads “Guilty” to the more serious charge, the prosecutor may withdraw the less serious of the alternative charges. This procedure must only be adopted after *R.P. 35 (B)* (see below) has been complied with. *R.P. 35 (C)*.

In such circumstances it should be recorded as follows: “The prosecutor withdraws the 2nd charge.”

If there are alternative charges and the accused pleads “Guilty” to the less serious charge and “Not guilty” to the more serious charge, the Court should proceed as if the accused had pleaded “Not guilty” to both charges. *R.P. 37*.

**Mixed Plea.**—If there are more than one charge (not alternative) in the charge sheet and the accused pleads “Guilty” to some charges and “Not guilty” to other charges, the Court should proceed to try the charges to which the plea of “Not guilty” has been made, and then proceed with the charges to which the plea of “Guilty” has been made. *R.P. 37 (A)*.

**NOTE.**—At any time during the trial the accused may withdraw a plea of “Not guilty” to a charge and plead “Guilty.”

**Plea of “Guilty.”**—If an accused pleads “Guilty” to any charge, before such plea is recorded or any further steps are taken the provisions of *R.P. 35 (B)* must be complied with. They are:—

If an accused person pleads “Guilty,” that plea shall be recorded as the finding of the Court; but, before it is recorded, the President, on behalf of the Court, shall ascertain that the accused understands the nature of the charge to which he has pleaded guilty, and shall inform him of the general effect of that plea, and in particular of the meaning of the charge to which he has pleaded guilty, and of the difference in procedure which will be made by the plea of guilty, and shall advise him to withdraw that plea if it appears from the Summary of Evidence that the accused ought to plead not guilty.

(11) Here insert the number of the charge (or charges) in respect of which this rule has been complied with.

**Objection to the Charge.** *R.P. 32*. The accused, when required to plead to any charge, may object to the charge on the ground that it does not disclose an offence under the Army Act, or is not in accordance with the Rules of Procedure.

**Procedure:—**

- (a) The Court should hear any submission made by the prosecution; and
- (b) The Court should hear any submission made by the defence.
- (c) Close and consider the objection.

**Courses open to the Court:—**

- (a) Disallow objection and proceed with the trial.
- (b) Allow the objection and adjourn to report to the convening authority.
- (c) Adjourn to consult the convening authority.

**Precedents:—**

The accused objects to the charge on the ground that (*set out*).

The prosecutor submits that:—

The defending officer submits that:—

The Court is closed to consider their decision.

The Court disallow the objection [*or*, the Court allow the objection and agree to report to the convening authority].

The Court is reopened, and the above decision is made known to the accused.

The Court proceed to the trial [*or adjourn*].

**Amendment of Charge Sheet: *Mistakes in Description, etc., of Accused.*** *R.P. 33 (A)*. At any time during the trial, if it appears to the Court that there is a mistake in the name or description of the accused in the charge sheet, the Court may amend the charge sheet so as to correct the mistake.

**Precedent:** The Court, being satisfied that the name (or description) of the accused is ..... and not as stated in the charge sheet, amend the charge sheet accordingly.

**Omissions or Alterations in the Charge.** *R.P. 33 (B)*. If on the trial of any charge it appears to the Court at any time before they have begun to examine the witnesses, that in the interest of justice any addition to, omission from, or alteration in, the charge is required, they may report their opinion to the convening authority and may adjourn, and the convening authority may either direct a new trial to be commenced, or amend the charge and order the trial to proceed with the amended charge after due notice to the accused.

**Notes:—**

- (a) The objection may be made by the accused, the Judge-Advocate, the President, or any Member of the Court.
- (b) The objection must be made before any witnesses have been heard.
- (c) The objection may be made before or after arraignment.

**Procedure:—**

- (a) The Court should hear the submission with regard to the charge, either by the prosecution or the defence.
- (b) The Court should, if necessary, close to consider their decision.
- (c) The Court should, if necessary, reopen and announce their decision.
- (d) If the submission is upheld the Court should adjourn.

**Precedent:** The Court, before any witnesses are examined, consider that, in the interest of justice, the following addition to (or omission from or alteration in) the charge is required (*set out*) and adjourn and report their opinion to the convening authority.

**Plea to the Jurisdiction of the Court.** *R.P. 34.* The accused, before pleading to a charge, may offer a special plea to the general jurisdiction of the Court—i.e.,

- (a) That the Court is improperly constituted, either in respect of the rank or number of the Members.
- (b) That the accused is not amenable to the jurisdiction of the Court.

**Procedure :—**

- (a) The Court shall receive any evidence in support of the plea.
- (b) The Court shall hear any evidence by the prosecution in disproof or qualification of the plea.
- (c) Any address by or on behalf of the accused.
- (d) Any reply by the prosecutor.

NOTE.—Evidence on the plea is given on oath. The accused may give evidence.

The Court may—

- (a) Overrule the plea and proceed with the trial.
- (b) Allow the plea ; record their reasons for it ; and adjourn and report to the Convening Officer.
- (c) If in doubt as to the validity of the plea, they may refer the matter to the convening officer, or they may record a special decision with respect to the plea and proceed with the trial.

### Precedents :—

The accused pleads to the general jurisdiction of the Court on the ground that (*set out*).

Do you wish to give evidence yourself or produce any evidence in support of your plea?

Witness is examined on oath.

[Instruction.—The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in the case of witnesses to the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.]

**The Court is closed to consider their decision.**

The Court (a) overrule the plea and decide to proceed with the trial; or (b) allow the plea and decide to report to the convening authority, and adjourn; or (c) are in doubt as to the validity of the plea and decide to refer the matter to the convening authority and adjourn [or make the following special decision (*set out*) and decide to proceed with the trial].

The Court is reopened, and the above decision is made known to the accused.

The Court proceed with the trial (or adjourn).

**Refusal to Plead.** *R.P. 35 (A).* . . . if he (the accused) refuses to plead or does not plead intelligibly . . . a plea of "Not guilty" shall be recorded on each charge on which he is arraigned.

Precedent: The accused does not plead intelligibly [or refuses to plead] to the above charge, the Court enter a plea of not guilty.

**Insanity.** *R.P. 57 (4).* Where the Court find that the accused is unfit by reason of insanity to take his trial . . . the President shall date and sign the finding, and the proceedings, upon being signed by the Judge-Advocate, if any, shall at once be transmitted for confirmation.

Precedent : The Court find that the accused (*number, rank, name, regiment*) is by reason of insanity unfit to take his trial.

Signed at                      this                      day of                      194

(Judge-Advocate)

(President)

**Plea in Bar of Trial.** *R.P. 36 (A).* The accused at the time of his general plea of "Guilty" or "Not guilty" to a charge for an offence may offer a plea in bar of trial on the ground that—

- (i) he has been previously convicted or acquitted of the offence by a competent civil Court or by a Court-Martial, or has been dealt with summarily for the offence by his Commanding Officer or by an officer having power to deal summarily with the case, or a charge in respect of the offence has been dismissed ; or
- (ii) the offence has been pardoned or condoned by competent military authority ;
- (iii) the time which elapsed between the commission of the offence and the beginning of the trial was more than three years, or in the case of a civil offence proceedings in respect of which must be commenced within a shorter period than three years, more than the shorter period.

NOTE.—When the plea is made the accused must also plead “Guilty” or “Not guilty” to the charge.

**Procedure :** The Court shall—

- (b) hear any address made by or on behalf of the accused and any address by the prosecutor in reference to the plea.

### Precedents :—

Accused, besides the plea of guilty (*or not guilty*), offers a plea in bar of trial, on the following grounds (*set out*).

What are the grounds of your plea?

Do you wish to give evidence yourself or to call any witnesses in support of your plea?

Witness is examined on oath.

[Instruction.—*The examination, &c., of the accused, if he wishes to give evidence, and of the witnesses called by the accused, and of any witnesses called by the prosecutor in reply, will proceed as directed below in the case of witnesses to the facts at the trial. The prosecutor will be entitled to reply after all the evidence is given.*]

The Court is closed to consider their decision.

The Court allow the plea and resolve to adjourn (or to proceed to the trial on another charge) (or the Court overrule the plea).

The Court is reopened, and the above decision is made known to the accused.

The Court adjourn (or proceed with the trial on another charge) (or proceed with the trial).



## NOTES ON PAGE C, A.F. A 9

Page C is only required where the trial proceeds on one or more charges of "Not guilty."

(1) This question must be put to the accused before proceeding. *R.P. 39*. The question will only be asked if the accused pleads "Not guilty" to one or more of the charges.

(2) Here insert answer, as indicated. If the accused asks for an adjournment, the Court should—

(a) Hear any statement or evidence in support of the application.

(b) Hear any statement of the prosecutor or evidence in answer to the application.

The Court, having considered the application, may grant any adjournment they consider proper in the circumstances. A record of this application, etc., and the Court's decision should be made on foolscap paper and attached to the proceedings.

(3) The prosecutor may, if he desires, and shall if required by the Court, make an opening address. *R.P. 39 (B)*.

[If the address of the prosecutor is not in writing, the Court should record so much as appears to them material, and the record should be attached to the proceedings.]

(4) In the case of Service witness, insert number (if any), rank, name, unit and station.

In the case of civilian witness, insert name, address and occupation.

(5) The oath shall be administered by the Judge-Advocate, the President or a Member of the Court, and in the presence of the accused. *R.P. 82 (A)*.

It is customary for the junior Member to administer the oath.

The form of oath for a witness is :—

I swear by Almighty God that the evidence which I shall give before this Court shall be the truth, the whole truth and nothing but the truth.

A person taking the oath will take the New Testament or, in the case of a Jew, the Old Testament in his uplifted hand and will say or repeat the oath after the person administering it.

A person may make the following solemn declaration instead of taking the oath :—

I (*name in full*) do solemnly promise and declare that the evidence that I shall give before this Court shall be the truth, the whole truth and nothing but the truth.

In the case of person where the above oath or solemn declaration is inappropriate an oath may be administered in such form and with such ceremonies as the person to be sworn declares to be, according to his religion, binding on his conscience. *R.P. 30 (B)*. In such circumstances it is advisable to follow the practice of the civil Court in the district.

**Examination of Witnesses.**—Witnesses for the prosecution may be—

(a) Examined in chief by the prosecutor.

(b) Cross-examined by the defence.

(c) Re-examined by the prosecutor on matters raised in cross-examination.

(d) Questioned by the President, the Judge-Advocate, or any Member of the Court.

(6) Here record the evidence of the 1st witness for the prosecution.

[The evidence shall be taken down in narrative form in as nearly as possible the words used ; but in any case where the prosecutor, the accused, the Judge-Advocate, or the Court considers it material, the question and answer shall be taken down *verbatim*. *R.P. 95 (A)*.]

(7) If the witness is cross-examined insert these words.

(8) Here record the cross-examination. This may be in narrative form or in the form of question and answer.

(9) If the witness is re-examined insert these words.

(10) Here record the re-examination.

(11) If the witness is questioned by the Judge-Advocate, the President or a Member of the Court here insert these words.

(12) Here record the questions.

(13) *R.P. 83 (B)* requires that : The evidence of a witness as taken down should be read to him after he has given all his evidence and before he leaves the Court, and such evidence may be explained or corrected by the witness at his instance. If he makes any explanation or correction, the prosecutor and accused or counsel or the defending officer may respectively examine him respecting the same.

The fact that *R.P. 83 (B)* has been complied with must be shown by the inclusion of the words at (13). This is unnecessary if a shorthand writer is being employed to record the proceedings.

If explanation or correction is necessary the original record must not be altered, but such explanation or correction indicated by use of the following precedents :—

The witness, on his evidence being read to him, makes the following explanation or correction (*set out*).

Examined by the prosecutor as to the above explanation or alteration.

Examined by [*or on behalf of*] the accused as to the above explanation or alteration.

The prosecutor and the accused [*or counsel or defending officer*] decline to examine the accused respecting the above explanation [*or correction*].

See page 80 with regard to—

Examination of Witnesses.

Leading Questions.

Hostile Witnesses.

Postponement of Cross-Examination.

Objections to Evidence or Procedure.

Calling Fresh Witnesses.



# C

## PROCEEDINGS ON PLEA OF NOT GUILTY.

\*Instruction. [See  
R.P. 39 (A).]

Question.

(1) \*Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence ?

Answer.

(2) " No " (or) " I apply for an adjournment on the following grounds :

(3) The prosecutor makes an opening address [hands in a written address which is read, marked , signed by the President, and attached to the proceedings]

The prosecutor proceeds to call witnesses.

First witness for  
prosecution.

(4)  
} 421063 Corporal Arthur Jones, 100th Provost Company, Corps of Military Police,

(5)  
Mudhampton, being duly sworn, is examined by the prosecutor.

(6)  
I was on duty at 2300 hours on the 11th June, 1939, in Mudhampton High Street,

etc. etc. etc.

Cross-examined by the defending officer (or the accused or by Counsel). (7)

(8)

Re-examined by the prosecutor. (9)

(10)

Questioned by the Court. (11)

(12)

R.P. 83 (B) complied with. (13)

# NOTES ON RECORDING EVIDENCE AND EXAMINATION OF WITNESSES.

## Recording Production of Documents.

Documents must be produced by a witness on oath.

Precedent : I produce \_\_\_\_\_, which is marked "K" (or other letter), signed by the President and attached to the proceedings.

The contents of documentary exhibits are usually read to the Court by the Judge-Advocate or President.

## Objection to Evidence or Procedure.

R.P. 70. If any objection on any matter of law, evidence or procedure is raised by the prosecutor or by or on behalf of the accused during the trial, the prosecutor or the accused or counsel or the defending officer (as the case may be) shall have the right to answer the same and the person raising the objection shall have the right of reply.

Precedent : The accused [or counsel or defending officer or the prosecutor] objects to the following question on the ground that (set out).

The Court is closed to consider their decision.

The Court overrule (or allow) the objection, and the Court is reopened and the decision announced and the Court proceed with the trial.

## Leading Questions.

A witness in "Examination-in-Chief" and in re-examination must not be asked leading questions on any material point.

A leading question is a question which suggests to the witness the answer that should be given, or a question which is put in such a form as to suggest disputed facts—*e.g.*, a witness should not be asked, "Did the accused then go into the barrack-room?" as a question in this form suggests to the witness what took place. The proper manner in which such a question should be put to a witness should be "What did the accused do next?" (See page 99, M.M.L.)

## Hostile Witnesses.

If the Court are satisfied that a witness is hostile to the person calling him, the Court may allow the person calling the witness to ask him leading questions, cross-examine him, and treat him as if he were a witness called by the other side. (See pages 100-101 M.M.L.)

## Postponement of Cross-Examination.

R.P. 84 (B). The Court may, if they think fit, allow the cross-examination of a witness to be postponed.

Precedent : The Court, at the request of the accused, allow the cross-examination of a witness to be postponed.

## Non-calling of Witness shown in the Summary of Evidence.

R.P. 75. The prosecutor need not call all the witnesses who gave evidence at the Summary of Evidence, but he should have available and call those witnesses that the defence wish to cross-examine.

## Calling Witness who did not give Evidence at the Summary.

R.P. 76. The prosecutor may call witnesses who did not give evidence at the taking of the Summary of Evidence, provided the accused is given notice of such intention and furnished with an abstract of this witness's evidence. If a witness is called without such notice the accused is entitled to an adjournment.

## Sitting in Camera.

A Court-Martial may sit *in camera* if necessary for the proper administration of justice. R.P. 63 and notes.

## Adjournment to View.

A Court may adjourn to view any place or object. All Members of the Court must be present, also the Judge-Advocate (if any) and the accused, prosecutor and defending officer. At the "View" the accused must not be asked any questions unless he was under examination as a witness before the Court adjourned and his evidence had not been completed.

Precedent : At \_\_\_\_\_ o'clock the Court adjourned to view the \_\_\_\_\_ in accordance with Rule of Procedure 63 (B). Present : Judge-Advocate, President, Members of the Court, prosecutor, accused, counsel for the defence (or defending officer).

At \_\_\_\_\_ o'clock the Court reassembled. Present : the same Members.

## Ordinary Adjournment.

Precedent : At \_\_\_\_\_ o'clock the Court adjourns until \_\_\_\_\_ o'clock on the \_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock, the Court reassembled, pursuant to adjournment. Present : the same Members as on the \_\_\_\_\_ of \_\_\_\_\_

[Instruction.—(1) If on reassembly a Member is absent, and his absence will reduce the Court below the legal minimum, as it appears to the Members present that the absent Member cannot attend within a reasonable time, the President or senior Member present will thereupon report the case to the Convening Officer.

(2) If either the President or the Judge-Advocate is absent, and cannot attend within a reasonable time, the Court will adjourn, and the President or senior Member present will thereupon report the case to the convening authority.]

## Late Sitting.

Precedent : The Court think it expedient to sit after six o'clock in the afternoon on the ground that (set out).

## C2

*Here continue the evidence of the witnesses for the prosecution in a similar manner to that indicated on page C 1.*

*A margin should be left on the right-hand side. It should be marginally noted the number of the witness for the prosecution, e.g.—*

*Second witness for the  
prosecution,  
etc. etc.*

*If more space is required for recording the evidence, sheets of foolscap should be used and they should be numbered C 3, C 4, C 5, etc.*



## NOTES ON PAGE D, A.F. A 9.

The accused should be ordered to stand and these three questions should be put to him. The answers should be entered in the appropriate space.

### Adjournment to Prepare Defence.

Precedent: The Court at the request of the accused (or counsel or defending officer) adjourn until in order to enable him to prepare his defence.

On the \_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_, at \_\_\_\_\_ o'clock, the Court reassemble, pursuant to adjournment. Present, the same Members as at \_\_\_\_\_

### Order of Procedure.

The order of the procedure now to be adopted depends upon the answers to the above questions—*e.g.* :—

If the accused wishes to give evidence and does not intend to call witnesses as to the facts of the case—

- (1) the accused will give evidence immediately after the close of the evidence for the prosecution ;
- (2) the accused may, if he wishes, call witnesses as to his character ;
- (3) the prosecutor may make a final address ;
- (4) the accused or counsel or defending officer may make a closing address. *R.P.* 40 (C).

If the accused wishes to give evidence and call witnesses to the facts—

- (1) the accused or his representative may make an opening address ;
- (2) the accused will give evidence as a witness and call other witnesses, including witnesses as to character, if he so desires ;
- (3) the defence may make a closing address ;
- (4) the prosecutor may reply. *R.P.* 41 (A).

If the accused does not wish to give evidence and does not intend to call witnesses—

- (1) If he is not represented by counsel or by a defending officer,
  - (a) the accused may, if he wishes, call witnesses as to character ;
  - (b) the prosecutor may make a final address for the purpose of summing up the evidence for the prosecution ;
  - (c) the accused may then make an address in his defence.
- (2) If he is represented by counsel or a defending officer,
  - (a) the accused may make a statement ;
  - (b) the accused may, if he wishes, call witnesses as to character ;
  - (c) the defence may make a closing address ;
  - (d) the prosecutor may reply.

But if the accused has made no statement, the address of the prosecutor will precede the closing address of the defence. *R.P.* 40 (D).

If the accused states that he does not intend to give evidence, but does intend to call witnesses to the facts of the case—

- (1) If he is not represented by counsel or an officer,
  - (a) the accused may make an opening address ;
  - (b) the accused will call his witnesses ;
  - (c) the accused may make a closing address ;
  - (d) the prosecutor may reply.
- (2) If he is represented by counsel or an officer,
  - (a) the accused may make a statement ; if the accused makes no statement, his representative may make an opening address ;
  - (b) the accused will call his witnesses, including, if he so desires, any witnesses to character ;
  - (c) the defence may make a closing address ;
  - (d) the prosecutor may reply. *R.P.* 41 (B).

### Procedure in Case of Joint Trial.

If there are two or more accused being tried together, then the above procedure will be modified as follows :—

Where two or more persons are tried together and any evidence to the fact of the case other than his own is tendered by any one of them, the evidence and addresses on behalf of the accused will be taken before the prosecutor replies ; and the prosecutor will make one address in reply as regards all the accused persons. *R.P.* 61.

### Statement or Evidence of Accused.

A *statement* is made by the accused without being sworn. He must make the statement from his position in Court as the accused. He must not be cross-examined or questioned on his statement.

*Evidence* is given by the accused after he has been duly sworn. He gives evidence from the witness box or place from which other witnesses gave their evidence, and he shall be treated like any other witness. His cap should be returned to him during the time he is giving evidence, but he should remain under escort. *R.P.* 80 (C) and *note* 6.

- (1) If the accused gives evidence, the record of such should be commenced on page D 2.
- (2) If the accused makes a statement, here record the statement, or if in writing, the statement should be marked with the appropriate initial, signed by the President and attached to the proceedings.

## D

The prosecution is closed.

### DEFENCE.

Question to the accused.

Do you apply to give evidence yourself as a witness ?

Answer.

Question.

Do you intend to call any other witness in your defence ?

Answer.

Question.

Is he a witness as to character only ? Answer.

### INSTRUCTIONS TO THE COURT.

- (i) When the answers to the above questions have been recorded, the Court will follow the provisions of Rules of Procedure 40 and 41 respecting the order of evidence and addresses which is applicable to the circumstances of the case.
- (ii) All addresses by prosecutor, counsel or defending officer, whether recorded by the Court or handed in in writing, will be attached to the proceedings in the order in which they are made. Any address which the accused is entitled to make pursuant to Rules of Procedure 40 (C) (iv) and 41 (A) (i) and (iii) will be similarly dealt with. Written addresses will be read to the Court, marked and signed by the President. If any person who is entitled to make an address declines to do so, a record will be made to that effect.

---

*(Where any evidence is given for the defence.)*

The evidence of the accused (and of the witnesses for the defence including witnesses as to character) is recorded on a separate page. (See page 85.)

(1)

---

*(Where the accused does not give evidence upon oath.)*

Question to the accused.

Have you anything to say in your defence ?

Answer.

The accused in his defence says† (2)

[hands in a written address which is read, marked

signed by the President and attached to the proceedings.]

Instruction.

† In this space will be recorded any oral statement or address made by the accused in his defence when he has not given evidence as a witness. (For any additional address which he is entitled to make, see Instructions to the Court above.)

## EVIDENCE FOR THE DEFENCE.

The evidence for the defence should be recorded on page D 2 in a similar manner to that for the prosecution. The evidence should be continued on foolscap sheets, which should be lettered D 3, D 4, etc. etc.

### Evidence of Accused.

This should be recorded as shown on the opposite page.

*R.P. 80 (F).* Where the only witness as to the facts of the case called by the defence is the accused, he shall give evidence immediately after the close of the evidence for the prosecution.

*R.P. 41, note 3.* The accused is entitled to give his evidence at any time during the hearing of the evidence for the defence, although he has previously stated that he does not apply to give evidence himself. He should, however, usually give his evidence before any other witnesses for the defence, and should be warned that if he gives his evidence after hearing that of other witnesses for the defence, the value of it may be considerably discounted.

### Cross-Examination of Accused.

*R.P. 80 (D).* The accused may be asked any question in cross-examination, notwithstanding that it would tend to criminate him as to the offence charged, but shall not be asked, and if asked, shall not be required to answer any question tending to show that he has committed, or been convicted of or been charged with any offence other than that with which he is then charged or is of bad character, unless—

- (i) the proof that he has committed or been convicted of such other offence is admissible evidence to show that he is guilty of the offence with which he is then charged ; or
- (ii) he has personally or by his counsel or defending officer asked questions of the witnesses for the prosecution with a view to establish his own good character or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the witnesses for the prosecution ; or
- (iii) he has given evidence against any other person charged with the same offence.

### Evidence of Witnesses for the Defence.

This should be recorded in similar manner to that shown on the opposite page.

### Wife of Accused as Witness.

The wife of an accused is a competent witness, but (except in special cases)

- (a) she can only give evidence for the defence, and
- (b) she can only give evidence if her husband applies that she should do so.

*R.P. 80 (E).* The wife of an accused person shall not be compelled to disclose any communication made to her by her husband during marriage.

### Joint Offenders as Witness.

*R.P. 80 (D) (iii) and note 10.* A person charged jointly with another is a competent witness for the defence, but he cannot be called against his will by his co-defendant. If one accused, in giving evidence on his own behalf, incriminates the other, the latter may cross-examine him.



*The evidence of the witnesses for the defence, including that of the accused, if he is a witness, will be taken here in the order in which they give evidence.*

*First witness for defence.*

*The accused (number, rank, name and unit) having been duly sworn [or being examined by Counsel or defending officer] states :—*

.....  
.....  
.....

*Cross-examined by prosecutor (if applicable).*

.....  
.....  
.....

*Re-examined (if applicable).*

.....  
.....

*Questioned by Court.*

.....

*R.P. 83 (B) complied with.*

*Second witness for defence.*

*(Record as above).*

*Etc. Etc. Etc.*

## NOTES ON MATTERS ARISING AFTER THE EVIDENCE FOR THE DEFENCE HAS BEEN CONCLUDED.

### RECALLING WITNESSES.

At the conclusion of the evidence for the defence, witnesses may be recalled under the following rule.

*R.P. 86 (A).* At the request of the prosecutor or of the accused a witness may, by leave of the Court, be recalled at any time before the closing address of or on behalf of the accused for the purpose of having any question put to him through the President, or Judge-Advocate (if any).

(B) The Court may, if they consider it expedient in the interests of justice so to do, allow a witness to be called or recalled by the prosecutor before the closing address of or on behalf of the accused, for the purpose of rebutting any material statement made by a witness for the defence or for the purpose of giving evidence on any new matter which the prosecutor could not reasonably have foreseen.

(c) Where the accused has called witnesses as to character the prosecutor before the closing address of or on behalf of the accused may call or recall witnesses for the purpose of proving a previous conviction or entries in the conduct book against the accused.

(D) The Court may call or recall any witness at any time before the finding, if they consider that it is necessary in the interests of justice.

#### *Precedents.*

(1) At the request of the prosecutor (or of the accused) is recalled and examined on his former oath through the President (or Judge-Advocate) and states as follows (*set out*); or

(2) The prosecutor, with leave of the Court, calls (or recalls) for the purpose of rebutting a material statement made by a witness for the defence. The witness being duly sworn (or on his former oath) being examined by the prosecutor states as follows (*set out with any cross-examination, re-examination, etc.*).

(3) The prosecutor calls (or recalls) in reply to the witnesses as to character called by the accused. The witness being duly sworn (or on his former oath) being examined by the prosecutor states as follows (*set out with any cross-examination, re-examination, etc.*); or

(4) The Court, in accordance with the Rule of Procedure 86 (D), calls (recalls) who being duly sworn (or on his former oath) states in reply to the President (or Judge-Advocate) as follows (*set out*).

*Instruction.—In (1) (2) and (3) witnesses must be called or recalled before the closing address of or on behalf of the accused. In (4) witnesses may be called by the Court at any time before the finding; in this case the accused or counsel or defending officer should be given the opportunity of asking further questions through the Court.*

### FINAL ADDRESSES.

At the conclusion of the evidence for the prosecution and the defence, the defending officer or the accused and the prosecutor may, if they wish, address the Court.

The order in which the addresses are made is set out on page 82.

Nothing shall be referred to in these addresses which has not been indicated by the evidence or is a matter of Judicial Notice.

*R.P. 80 (B).* The failure of the accused or his wife to give evidence shall not be made the subject of any comment by the prosecutor.

*R.P. 60 (B).* The prosecutor may not refer to any matter not relevant to the charge or charges then before the Court, and it is the duty of the Court to stop him from so doing and also to restrain any undue violence of language or want of fairness or moderation on the part of the prosecutor and to prevent the prosecutor from commenting at any time on the failure of the accused or his wife to give evidence.

If the prosecutor infringes these rules, it should be recorded on the Proceedings.

If the addresses are in writing, they should be read to the Court, marked "X", signed by the President and attached to the Proceedings.

If the addresses are not in writing, notes of the addresses should be made on foolscap. Such notes headed "Notes on Closing Address of Prosecutor" or "Notes on Closing Address of Defending Officer," should be marked "X", signed by the President and attached to the Proceedings.

Adjournments may be made for the preparation of addresses.

#### *Precedents.*

The Court, at the request of the accused (Defending Officer), adjourn until to enable the accused to prepare his address.

The Court, at the request of the prosecutor, adjourn until to enable the prosecutor to prepare his reply.

### SUMMING UP.

R.P. 103 (e). At the conclusion of the case, the Judge-Advocate will, unless both he and the Court consider it unnecessary, sum up the evidence and advise the Court upon the law relating to the case before the Court proceed to deliberate upon their finding.

R.P. 42 (A). The summing up shall be in open Court.

R.P. 42 (B). After the summing up no other address shall be allowed.

In summing up the Judge-Advocate must be careful not to indicate to the Court any opinion which he may have formed as to the facts. He may, at his discretion, comment on the fact that the accused has not given evidence or called his wife as a witness. R.P. 42 and notes.

#### *Precedents.*

The Court, at the request of the Judge-Advocate, adjourn until \_\_\_\_\_ to enable him to prepare his summing up.

The Judge-Advocate makes the following summing up [or if the summing up is in writing, hands in a written summing up, which is read, marked "X", signed by the President and attached to the Proceedings]; or

The Judge-Advocate and the Court think a summing up unnecessary.



## NOTES ON PAGE CC, A.F. A 9.

Page CC is only required where there has been a plea of "Guilty" to one or more charges.

(1) Strike out if not required.

(2) Here insert number, rank, name and unit of the accused.

(3) Here insert "the charge," "all the charges," "the first charge," "the second charge," as applicable.

(4) If there are alternative charges, and the accused pleads "Guilty" to one of the alternative charges, consequently he must be "Not Guilty" to the other alternative charge, it should be recorded here—e.g.:

"The accused (number, etc.) is found 'Guilty' of the charge(s) and 'Not Guilty' of the charge(s)."

(5) The Summary (or Abstract) of Evidence, or such part as is applicable to the "Guilty" charges, is now read and attached to the Proceedings. *R.P. 37 (B)*.

(6) If the accused makes any statement in mitigation of punishment it should be recorded here. If the statement is in writing, then it should be attached to the Proceedings.

**R.P. 37 (D).** If from the statement of the accused, or from the Summary or Abstract of Evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record and enter a plea of "Not guilty" and proceed with the trial accordingly.

The following examples are given of cases in which a plea of "Guilty" should be altered to a plea of "Not guilty" under this paragraph:—

- (a) Private A, charged with desertion (not being desertion to avoid a particular service), states: "I always meant to come back."
- (b) Private B, charged with stealing a tunic, states: "I only borrowed it for the evening."
- (c) Private C, charged with striking his superior officer, states: "I only did it to defend myself after he had struck me."
- (d) Private D is charged with sleeping on his post when a sentinel and makes no statement with reference to the charge. On the reading of the Summary of Evidence, it is found that all the witnesses depose that Private D was beyond the confines of his post when found asleep.
- (e) Corporal E is charged with disobeying a lawful command given by Corporal F, his superior officer, and makes no statement with reference to the charge. He calls a witness as to character, who states incidentally that Corporal F is junior to the accused. In this case the action of the Court in altering the plea of the accused would be founded upon the words "or otherwise" in this paragraph (*para. D, R.P. 37*).

### *Precedent.*

(7) The Court being satisfied from the statement of the accused (or the Summary of Evidence, or otherwise) that the accused did not understand the effect of the plea of "Guilty," enters at the foot of page CC of the Proceedings: "The Court consider that the accused does not understand the effect of his plea of 'Guilty,' alters the record, and enters a plea of 'Not guilty.'"

[Instruction.—*The Court will then proceed in respect of this charge as on a plea of "Not guilty."*]

### **Statement in Mitigation.**

A statement in mitigation can be made after the Form B 296 has been produced. (See page 93.)

*R.P. 37 (F)*. When the accused states anything in mitigation of punishment, which in the opinion of the Court requires to be proved and would, if proved, affect the amount of punishment, the Court may permit the accused to call witness to prove the same.

**NOTE.**—Although under the above paragraph, the permission of the Court is required to enable the accused to call witnesses in extenuation of the offence and consequent mitigation of punishment, such permission should always be given. *R.P. 37, note 7*.

*Precedent*: The Court give permission to the accused to give evidence himself and (or) to call witnesses to prove his above statement that [*here specify the statement which is proved*].

[Instruction.—*The examination of such witness should proceed in the normal manner.*]

# PROCEEDINGS ON PLEA OF GUILTY.

*\* To be struck out in case no plea of "Not Guilty" has been proceeded with.* (1) \* [The Court having been re-opened, the accused is again brought before it, and the charge to which he has pleaded "Guilty" read to him again.]

The accused (2)  
is found guilty of (3)  
(4)

(5) † [The Summary (or Abstract) of Evidence is read, marked signed by the President, and attached to the proceedings.]

*Question to the accused.* Do you wish to make any statement in mitigation of punishment ?

*Answer.* The accused in mitigation of punishment says :—

(6)

[or hands in a written statement, which is read, marked , signed by the President, and attached to the proceedings.]

(7)

*Instruction.*

† If there is no Summary or Abstract of Evidence, sufficient evidence to enable the Court to determine the sentence, and to enable the confirming officer to know all the circumstances connected with the case, will be taken on a separate sheet in the same manner as on a plea of "Not Guilty."

If from the statement of the accused, or from the Summary or Abstract of Evidence, or otherwise, it appears to the Court that the accused did not understand the effect of his plea of "Guilty," the Court shall alter the record, and enter a plea of "Not guilty," and proceed with the trial accordingly.

**NOTES ON PAGE DD, A.F. A 9.**

Page DD is only utilised where there has been a plea of "Guilty" to one or more charges.

This question must always be put to the accused on a plea of guilty.

The evidence of the accused and any witnesses as to character should be recorded here, in a manner similar to that of recording the evidence of witnesses either for the prosecution or the defence. (See pages 79 and 85.)



**DD**

Do you wish to give evidence yourself or to call any witnesses as to character ?

*Question to the accused.*

*Answer.*

*Evidence as to  
character.*

## NOTES ON PAGE E, A.F. A 9

*R.P. 43 (A).* The Court will deliberate on their finding in closed Court.

*R.P. 43 (B).* The opinion of every member of the Court as to the finding will be given by word of mouth on each charge separately.

*R.P. 69 (C).* The opinion of the members of the Court shall be taken in succession, beginning with the junior in rank.

*A.A. 53 (8), R.P. 69 note 2, R.P. 117 (A).* In the case of an equality of votes on the finding the accused shall be deemed to be acquitted.

*R.P. 45 (A).* If the finding on each of the charges in a charge sheet is "Not guilty," the President will date and sign the Proceedings and the findings will be announced in open Court, and if there are no other charges upon which the trial proceeds the accused will be released.

(B) . . . The Judge-Advocate shall also sign the Proceedings.

(C) Findings of "Not guilty" are announced in open Court.

NOTE.—A special finding (see below) is not a finding of "Not guilty" and is not announced in open Court.

### SPECIAL FINDINGS.

*R.P. 44 (D).* Where the Court are of opinion as regards any charge that the facts which they find to be proved in evidence differ materially from the facts alleged in the statement of particulars in the charge, but are nevertheless sufficient to prove the offence stated in the charge, and that the difference is not so material as to have prejudiced the accused in his defence, they may, instead of a finding of "Not guilty," record a special finding.

NOTES.—The special finding here referred to relates only to the particulars of the charge, and not to the statement of the offence, as to which see A.A. 56 and notes. Before recording a special finding under this paragraph, the Court must be satisfied that the facts which they find to be proved, subject to certain exceptions and variations, amount to the substance of the charge; otherwise they must acquit: e.g., on a charge against a soldier of losing by neglect a greatcoat and waistbelt, the Court may properly find the accused "Guilty of the charge except that he made away with and did not lose" the articles in question.

An immaterial variation of the date may be made by special finding, but in case of desertion or absence without leave the substitution of a date which would have the effect of lengthening the period of absence alleged in the charge would not be permissible.

On a charge of striking his superior officer—Serjeant A—with his fist in the face, the Court could properly except the words "in the face," but it could not make a special finding substituting Serjeant B for Serjeant A.

On a charge of fraudulently misapplying £100, a special finding that the sum misapplied was £50 would be permissible; but a special finding omitting from the particulars of the charge the words "with intent to defraud" would be tantamount to an acquittal. *R.P. 44, note 6.*

#### Precedent.

is guilty of the charge(s)  
with the exception of the words (*set out*) [or with the exception that (*set out*)].

*A.A., S. 56. (1)* An accused charged before a Court-Martial with stealing may be found guilty of embezzlement or of fraudulently misapplying property.

(2) An accused charged before a Court-Martial with embezzlement may be found guilty of stealing or fraudulently misapplying property.

(3) An accused charged before a Court-Martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(4) An accused charged before a Court-Martial with attempting to desert may be found guilty of desertion or of being absent without leave.

(4a) An accused charged before a Court-Martial with striking may be found guilty of using or offering violence.

(4b) An accused charged before a Court-Martial with using violence may be found guilty of offering violence.

(4c) An accused charged before a Court-Martial with using threatening language may be found guilty of using insubordinate language.

(5) An accused charged before a Court-Martial with any offence under this Act may, on failure of proof of an offence being committed under circumstances involving a higher degree of punishment, be found guilty of the same offence as being committed under circumstances involving a less degree of punishment.

(6) Where an accused is charged before a Court-Martial with a civil offence and the charge is one upon which, if he had been tried by a civil Court in England for such an offence committed in England, he might have been found guilty of any other offence, the Court-Martial shall have power to find him guilty of that offence.

NOTES.—Some examples of charges for civil offences upon which an accused person, if tried by a civil Court, could be found guilty of certain other offences are set out below. For other examples see Table of Offences at end of M.M.L., pp. 130-4

Murder . . . manslaughter.

Assault occasioning actual bodily harm . . . common assault.

Burglary . . . larceny in dwelling-house to the value of £5, or housebreaking.

Indecent assault . . . common assault.

Robbery with violence . . . robbery, assault with intent to rob, larceny.

Wounding with intent to murder . . . unlawful wounding.

Unlawful wounding . . . common assault.

Any felony or misdemeanour . . . attempt to commit same.

#### Precedent [Example under S. 56 (3) above].

is not guilty of desertion but is guilty of absence without leave.

For further notes on Finding, see page 95.

Counsel for the defence or the defending officer may here address the Court on behalf of the accused in mitigation of sentence. If the address is in writing it should be attached to the Proceedings, marked , and signed by the President. If not in writing notes should be recorded on foolscap and the notes attached in a similar manner.

# E

## FINDING.\*

\* To be struck out except in cases where trial has taken place on a plea of "Not Guilty."

The Court is closed for the consideration of the finding.

The Court find that the accused,

No. 1234567, Private T. Atkins, 1st Battalion Royal East Sussex Regt.,

is not guilty of the charge (or all the charges) (and honourably acquit him of the same).

The finding(s) is (are) read in open court and the accused is released.

or

is not guilty of the (first) (second) charge(s) (and honourably acquit him of the same) but is guilty of the (third) (fourth) charge(s).

The finding(s) of "not guilty" is (are) read in open court.

or

is guilty of the charge (or all the charges).

Signed at

the

day of

1940

(Judge-Advocate)

(President)

## PROCEEDINGS ON CONVICTION Before Sentence.

\* When the Court is already open this sentence will be struck out.

Evidence of character, etc.

\*The Court being re-opened, the accused is again brought before it.

Captain A. B. Bayonet, Adjutant,  
1st Batt. Royal East Sussex Regt. is duly sworn.

Question by the President.

Q. Have you any evidence to produce as to the character and particulars of service of the accused?

A. Yes. I produce Form B 296.

The above statement [with the schedule of convictions and of cases in which trial has been dispensed with] is read, marked " ", signed by the President, and annexed to the proceedings.

Question by the President.

Q. Is the accused the person named in the statement which you have heard read?

A. Yes.

Question.

Q. Have you compared the contents of the above statement with the regimental books?

A. Yes.

Question.

Q. Are they true extracts from the regimental books, and is the statement of entries in the conduct sheets a fair and true summary of those entries?

A. Yes.

Cross-examined by the accused.

(The accused declines to cross-examine this witness.)

or

[here record (or on additional foolscap) any cross-examination by counsel for the defence or defending officer or accused, of the officer producing Form B 296.]

Q. Do you wish to address the Court?

A.

[Notes of address are attached on Exhibit "—".]

The Court is closed for the consideration of the sentence.

[Instruction.  
If by reason of the nature of the service of the accused in a departmental corps, or otherwise, the finding of the Court renders him liable to any exceptional punishment in addition to that to be awarded by the Court the prosecutor must call the attention of the Court to the fact, and the Court must inquire into the nature and amount of that additional punishment.]

Question to the accused.





## REFERENCE TO CONFIRMING AUTHORITY.

*R.P. 44 (C).* If the Court doubt as regards any charge whether the facts proved show the accused to be guilty or not of the offence charged or any offence of which he might under the Army Act legally be found guilty on the charge as laid, they may, before recording a finding on that charge, refer to the confirming authority for an opinion, setting out the facts which they find to be proved, and may, if necessary, adjourn for that purpose. Upon receiving the opinion of the confirming officer the Court will reassemble in closed Court to record their finding and shall not receive any further evidence.

*Precedent.*

The Court find as regards the \_\_\_\_\_ charge that the accused did (*set out the facts which the Court find proved*), but doubt whether the facts proved show the accused to be guilty or not of the offence charged [or of the offence of (*any offence of which the accused might under the Army Act legally be found guilty on the charge as laid*)]. They therefore refer to the confirming authority for an opinion and adjourn.

*R.P. 44 (G).* If the Court think that the facts proved constitute one of the offences stated in two or more of the alternative charges, but doubt which of those offences the facts do at law constitute, they may, before recording a finding on those charges, refer to the confirming authority for an opinion, setting out the facts which they find to be proved and stating that they doubt whether those facts constitute in law the offence stated in such one or another of the charges and may, if necessary, adjourn for that purpose. Upon receiving the opinion of the confirming officer the Court will reassemble in closed Court to record their finding and shall not receive any further evidence.

*Precedent* (Note : This applies only to alternative charges).

The Court find that the accused did (*set out such particulars of the charge as the Court find to be proved*), but doubt whether such facts constitute in law the offence stated in the \_\_\_\_\_ charge or in the charge. They therefore refer to the confirming authority for an opinion and adjourn.

(*In either case.*)

The Court reassembles on the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_ . The opinion of the confirming authority is read, marked \_\_\_\_\_, signed by the President and attached to the Proceedings.

The Court now find that the accused (*number, rank, name, regiment*) is (*the findings to be recorded in the usual manner*).

## FINDING OF INSANITY.

*R.P. 57 (a).* Where the Court find either that the accused is unfit by reason of insanity, to take his trial, or that he was guilty of the act or omission charged, but was insane at the time when he did the said act or made the said omission, the President shall date and sign the finding, and the Proceedings, upon being signed by the Judge-Advocate, if any, shall be at once transmitted for confirmation.

*Precedent.*

The Court find that the accused (*number, rank, name, regiment*) did the act (or made the omission) which forms the subject of the charge(s), but was insane at the time when he did (or made) the same.

## NOTES ON PAGE F, A.F. A 9.

Sentence in case of  
two or more accused.

*If the accused is acquitted on all charges this page (Page F) will not be utilised.*

**R.P. 71 (D).** Where the same Court is trying several cases separately, the Court may, if they consider it desirable in the interests of justice, postpone consideration of any sentence to be awarded to any one or more of such accused persons until the trials of all such accused persons have been completed.

**R.P. 69.** Every member of the Court must give his opinion with regard to the sentence by word of mouth, such opinions being taken in succession, beginning with the junior in rank.

(Even if a Member has voted for an acquittal on the finding he must vote on the question of sentence.)

**R.P. 48.** The Court shall award one sentence in respect of all offences of which the offender is found guilty.

(This rule applies whether the charges on which the offender has been tried are contained in one or several charge sheets.)

## SENTENCES.

**A.A., S. 48 (6).** A District Court-Martial . . . shall not award the penalty of death or penal servitude, but may award any of the following punishments :—

**S. 44 (k).** Imprisonment with or without hard labour for a term not exceeding two years.

**S. 44 (kk).** Detention for a term not exceeding two years.

**S. 44 (l).** Discharge with ignominy from His Majesty's service.

**S. 44 (m).** In the case of a non-commissioned officer, reduction to the ranks or to a lower grade, or forfeiture, in the prescribed manner, of seniority of rank.

**S. 44 (mm).** In the case of a non-commissioned officer, severe reprimand or reprimand.

**S. 44 (n).** Forfeitures, under Section 44, proviso (6) and (11).

*Fines.*—For drunkenness, not exceeding £5, under Section 19 of the Army Act.

*Stoppages.*—Under Section 138 of the Army Act.

**On Active Service.**—*i.e.*, if the words " On Active Service " appear in the statement of the offences—

**S. 44, proviso (5).** Field Punishment.

**S. 44, proviso (6).** Forfeiture of ordinary pay in addition to or without any other punishment, and not exceeding three months.

In addition to any of the above punishments—

**S. 44, proviso (11).** Forfeiture of medals or good conduct badges.

## FORMS OF SENTENCE.

Impt. H.L.  
(or without H.L.) for  
Detention for  
Field punishment for

(a) To be imprisoned with hard labour (without hard labour) for

(b) To undergo detention for

(c) To suffer field punishment for

[Instructions.—(1) *If a person charged is at the time of sentence undergoing imprisonment or detention under a former sentence, a new sentence of imprisonment or detention must not exceed such a term as will make up a period of two years from the date of the former sentence.*

(2) *In the case of a non-commissioned officer, a sentence of reduction to the ranks should precede a sentence of penal servitude, imprisonment, detention, or field punishment, although those sentences necessarily involve a reduction to the ranks.*

*Where, for any reason, a Court consider that a sentence of reduction to a lower rank in the case of a non-commissioned officer would be too severe a sentence, they can sentence the offender to forfeiture of seniority of rank.]*

Discharged with  
ignominy.  
Dismissed.  
Forfeiture of seniority,  
and reduction.

(d) To be discharged with ignominy from His Majesty's service.

(e) (If belonging to the Territorial Army) to be dismissed from His Majesty's service.

(f) (If a non-commissioned officer)—

(1) To take rank and precedence as if his appointment to the rank of \_\_\_\_\_ bore  
date \_\_\_\_\_ ; or

(2) to be reduced to the rank of serjeant ; or

(3) to be reduced to the rank of corporal ; or

(4) to be reduced to the rank of bombardier ; or

(5) to be reduced to (a lower rank) or to be reduced to the ranks ; or

(6) to be reprimanded or severely reprimanded.

(g) To be fined.

Fined £ s. d.  
Stoppages.

(h) To be put under stoppages of pay until he has made good the sum of \_\_\_\_\_ in respect of  
or (and) until he has made good the value of the following articles ;  
viz., value \_\_\_\_\_, value \_\_\_\_\_, etc.

Forfeiture of pay.

(i) To forfeit all ordinary pay for a period of \_\_\_\_\_

(j) To forfeit (state number or all) good conduct badge (or badges) with the pay attached thereto.  
To forfeit deferred pay in respect of \_\_\_\_\_ (all or calendar months or years)  
previous service.

To forfeit (all or years, or calendar months) past service for the purpose of determining pension.

[Instructions.—(1) *An offender may be sentenced to all or any of the above forfeitures.*

(2) *In the case of a warrant officer, a District Court-Martial must use one of the following forms either in lieu of, or in addition to such of the foregoing forms as relate to forfeitures, fines and stoppages] ;*

(k) To be dismissed from the service ; or

(l) To be reduced in the list of his rank as if his appointment thereto bore date the \_\_\_\_\_ day  
of \_\_\_\_\_ ; or

(m) To be reduced to an inferior class of warrant officer ; that is to say, to \_\_\_\_\_ ; or

(n) To be reduced to (lower grade) ; or

(o) (If he was originally enlisted as a soldier, but not otherwise) To be reduced to the ranks ; or

(p) To be reprimanded or severely reprimanded.

For further notes on Sentences, see page 98. For notes on Confirmation and Promulgation, see pages 98 and 99.



**F**

**SENTENCE.**

The Court sentence the accused.

*Sentence.*

*No. 1234567 Private Thomas Atkins, 1st Battalion The Royal East Sussex Regt.,  
to be imprisoned with hard labour for one year.*

*Imprisonment with hard  
labour for one year.*

*Signed at Mudhampton this 20th day of August, 1940.*

*B. Martin.*

*A. Brown, Major.*

*Judge-Advocate.*

*President.*

*Confirmed.*

*Signed at Aldershot this 22nd day of August, 1940.*

*H. Howitzer,*

*Brigadier.*

*Promulgated and extracts taken at Mudhampton this 23rd day of August, 1940.*

*G. Smith,*

*Capt. and Adjutant,*

*1st Bn. The Royal East Sussex Regt.*

## SENTENCES (continued)

### NOTES.

1. The wording of the sentence must include the accused's number, rank, full christian name and surname, unit, and the words applicable to the sentence. (See example.)
2. The sentence must be marginally noted as shown.
3. The proceedings must be signed by the President and the Judge-Advocate as shown. *R.P. 50.*
4. *Imprisonment and Detention.*—Terms of imprisonment and detention not amounting to six months will be awarded in days.  
Terms of imprisonment and detention of one or two years will be awarded in years.  
Other terms of imprisonment and detention will be awarded in months or, if necessary, in months and days. *K.R. 683.*  
An offender shall not be subject to imprisonment or detention for more than two consecutive years when under one or more sentences. *S. 44, proviso (1B).*
5. A non-commissioned officer, when sentenced to forfeiture of seniority of rank, may also be sentenced to reprimand or severe reprimand. *S. 44, proviso (3).*
6. A soldier when sentenced to imprisonment may in addition thereto be sentenced to discharge with ignominy from His Majesty's service. *S. 44, proviso (4).*
7. In addition to any of the above punishments on Active Service, an offender may be ordered to forfeiture of ordinary pay not exceeding three months. *S. 44, proviso (6).*
8. In addition to or without any of the above punishments, an offender may be ordered to forfeit medals or good conduct badges. *S. 45, proviso (11).*
9. In addition to or without any other of the above punishments, an offender may be sentenced to a deduction from his ordinary pay under Section 138. *S. 44, proviso (12).*
10. If the accused has elected to be tried by Court-Martial the sentence should not ordinarily be greater than that which his Commanding Officer could have given him—*i.e.*, 28 days' detention. *K.R. 681 (d).*
11. In the case of a non-commissioned officer, sentenced to imprisonment, detention or field punishment, a sentence of "Reduction to the ranks" should precede the sentence to imprisonment, detention or field punishment, although such sentence necessarily involves reduction to the ranks. *S. 183 (4).*
12. A District Court-Martial, in dealing with a non-commissioned officer, must disregard acting or lance ranks. Lance or acting rank is a matter to be dealt with entirely by the Commanding Officer, and not being a legal rank under K.R. is not cognizable in the sentence of a Court-Martial. Thus a sentence of reduction from or to acting or lance rank is inoperative; nevertheless certain other punishments peculiar to a non-commissioned officer may be awarded to a soldier holding such appointments—*i.e.*, reprimand or severe reprimand. *S. 183, note 6.*

## CONFIRMATION.

The following courses are open to the confirming officer :—

- (a) He may confirm.
- (b) He may refuse to confirm.
- (c) He may send back the proceedings to the Court for revision.
- (d) He may reserve confirmation for superior authority.
- (e) If the sentence is informally expressed he may put it in order. *R.P. 55.*
- (f) If the punishment awarded by the Court is in excess of that authorized by law, he may vary it to make it legal.
- (g) He may refer to the Judge-Advocate-General for advice.

Confirmation should normally be withheld in the following circumstances :—

- (a) Where the provisions of Sections 48, 50, 51 or 52 relating to jurisdiction have been contravened.
- (b) Where evidence of a nature prejudicial to the accused has been wrongly admitted.
- (c) Where the accused has been unduly restricted in his defence.
- (d) Where a finding of guilty has been come to with the exception of certain words of the charge, and these words so far describe the essence of the offence, that the finding, with the words omitted, fails to disclose an offence of which the Court could legally have convicted.
- (e) Where a special finding of guilty fails to disclose an offence of which the Court could legally have convicted.
- (f) Where the charge is bad in law, even though the accused has pleaded guilty.
- (g) Where there has been such a deviation from the Rules of Procedure that injustice has been done to the accused. *S. 54, note 7.*

The following are the powers of a Confirming Officer with regard to sentence :—

- (a) Mitigation—*i.e.*, awarding a less amount of the same species of punishment (*S. 57, note 3*); *i.e.*, six months' imprisonment to three months' imprisonment.
- (b) Remission of the whole or part of the sentence (*S. 57, note 4*)—*i.e.*, "reduction to ranks and fifty-six days' detention" to "Reduction to ranks."
- (c) Commutation of the punishment to a different form of punishment lower in the scale of punishment authorized by Section 44 of the Army Act—*i.e.*, "Imprisonment to detention."
- (d) Suspension of the execution of a sentence or suspension of the operation or commencement of a sentence. *S. 57 (4).*

**Precedents.**

Confirmed ; or

I vary the sentence so that it shall be as follows and confirm the finding and the sentence as so varied ; or

I confirm the finding and sentence of the Court, but mitigate (remit, or commute ) ; or

(Where the Confirming Officer desires partly to reserve his confirmation) I confirm the finding of the Court on the and charges and reserve for confirmation by superior authority the finding on the and charges, and the sentence ; or

I confirm the findings of the Court, but reserve the sentence for confirmation by superior authority ;

or

I confirm the findings of the Court and the sentence of the Court as to , and reserve the sentence so far as it for confirmation by superior authority ; or

(Where the finding is not confirmed) Not confirmed (*the reasons for non-confirmation may be stated*) ;

or

(Where a plea in bar of trial had been offered under R.P. 36) The finding of the Court that the plea in bar of trial is proved (or not proved) is confirmed (or not confirmed) ; or

(Where the Court find that the accused is unfit by reason of insanity to take his trial or that he was insane at the time when he did the act or made the omission charged against him.)

Confirmed (or not confirmed).

Signed at this day of 19 .

(*Signature of Confirming Authority.*)

[Instruction.—*Any remarks of the confirming authority should be separate from and form no part of the Proceedings. The confirming authority will in no case comment upon a finding of not guilty, or upon the inadequacy of the sentence.*]

**PROMULGATION.**

*R.P. 53.* The charge, finding, and sentence, and any recommendation to mercy shall, together with the confirmation or non-confirmation of the proceedings, be promulgated in such manner as the confirming authority may direct ; and if no direction is given, according to the custom of the service. Until promulgation has been effected, confirmation is not complete and the finding and sentence shall not be held to have been confirmed until they have been promulgated.

*K.R. 698 (a).* Promulgation may take place by reading out the above particulars on parade if the confirming authority so directs.

*K.R. 688.* A person found guilty by a Court-Martial may be placed under open arrest pending the promulgation of the sentence, in the circumstances set out in this K.R.

Proceedings which are not confirmed must be promulgated.



## COMPLETION OF PROCEEDINGS.

1. The various pages, etc., of the proceedings should be put together in the following order :—

### PLEA OF "NOT GUILTY."

Form A 9, pages A and B.  
Charge Sheet, marked "B 2."

Form A 9, pages C and C 2.  
Evidence for prosecution on separate sheets, marked "C 3," "C 4," etc.

Form A 9, pages D and D 2.  
Evidence for defence on separate sheets, marked "D 3," "D 4," etc.

Form A 9, pages E and F.  
Convening Order, marked "G."  
Exhibits (including any written address or notes of addresses, which should be marked "H," "I," etc., and attached in consecutive order).  
Army Form B 296.

### PLEA OF "GUILTY."

Form A 9, pages A and B.  
Charge Sheet, marked "B 2."

Form A 9, pages CC and DD.  
Evidence as to character (if given at this stage) on separate sheets, marked "DD 2," "DD 3," etc.

Form A 9, pages E and F.  
Convening Order, marked "G."  
Summary of Evidence, marked "H."  
Exhibits (including any written statement of accused or address or notes of addresses, which should be marked "I," "J," etc., and attached in consecutive order).  
Army Form B 296.

### PLEA OF "GUILTY" TO SOME CHARGES AND "NOT GUILTY" TO OTHERS.

Form A 9, pages A and B.  
Charge Sheet, marked "B 2."

Form A 9, pages C and C 2.  
Evidence for the prosecution on separate sheets, marked "C 3," "C 4," etc.

Form A 9, pages D and D 2.  
Evidence for the defence on separate sheets, marked "D 3," "D 4," etc.

Form A 9, pages CC and DD.  
Evidence as to character (if given at this stage) on separate sheets, marked "DD 2," "DD 3," etc.

Form A 9, pages E and F.  
Convening Order, marked "G."  
Exhibits (including any written address or notes of addresses, which should be marked "H," "I," etc., and attached in consecutive order).  
- Summary of Evidence with regard to the charges to which a plea of "Guilty" has been made.  
Army Form B 296.

2. All alterations should be initialled.

3. All the pages of the proceedings, including Charge Sheet, notes of addresses, Convening Order, exhibits, etc., should be numbered consecutively on both sides throughout.

4. All questions and answers should be numbered consecutively throughout, as—  
Q. 1 and A. 1, etc.

5. Exhibits must bear the same letter as referred to in the proceedings and signed :—

A. BLANK, *Major,*  
*President, District Court-Martial.*

6. Proceedings must be properly signed. (See pages 97 and 98.)

## PUBLICATION IN ORDERS OF RESULT OF COURT-MARTIAL.

*K.R. 698 (b).* The results of all Courts-Martial will be published in Orders of all formations in which the notice of the convening of the Court appeared. In every case such records will be published in the Orders of the Unit concerned, in Part I Orders in the case of an officer, and in Part II Orders in the case of a soldier.

### *Precedents.*

#### DISTRICT COURT-MARTIAL.

No. 1234567 Private Thomas Atkins, 1st Battalion The Royal East Sussex Regiment, was tried by District Court-Martial on....., 1940, on the following charges:

- (1) Section 12, Army Act ; Desertion.
- (2) Section 18 Army Act ; Stealing.

The accused was found guilty of the charge under S.12 and not guilty of the charge under S.18.

The Court sentenced the accused to undergo detention for 112 days.

The finding and sentence have been confirmed.

The confirming authority has mitigated 28 days of the sentence. X

The Court convened for this trial in.....Orders, No.....is hereby dissolved.

## RESTITUTION OF STOLEN PROPERTY.

*S. 75.—*(1) Where a person has been convicted by Court-Martial of having stolen, embezzled, received knowing it to be stolen, or otherwise unlawfully obtained, any property, and the property or any part thereof is found in the possession of the offender, the authority confirming the finding and sentence of such Court-Martial, or the Army Council, may order the property so found to be restored to the person appearing to be the lawful owner thereof.

#### RESTITUTION ORDER.

Whereas by District Court-Martial held at..... on....., 1940, No. 1234567 Private Thomas Atkins, 1st Battalion The Royal East Sussex Regiment, was found guilty of (stealing) (embezzling)..... (here set out description of the property)..... the property of Mr. .... of ....., and whereas I have duly confirmed the said finding I hereby order, in accordance with my powers under Section 75 of the Army Act, that the said goods be returned to the aforesaid Mr.....

.....(place).

Brigadier.

.....(date).

Commanding the Brigade.

## REASSEMBLY OF COURT-MARTIAL FOR REVISION.

1. A Court-Martial may be ordered to reassemble for the purpose of the revision of the finding or sentence. *S. 54 (2).*

2. The Court on reassembling to revise their finding may :—

- (a) adhere to their finding ;
- (b) revoke the finding and record a new finding.

NOTE.—If the finding is revoked they must also revoke the original sentence. (If the new finding involves a sentence (*i.e.*, not an acquittal) they must pass a new sentence which must not be more severe than the sentence originally awarded. *R.P. 52.*

3. If the Court is reassembled for the purpose of revision of sentence they may adhere to their original sentence or pass a new sentence, which must not be more severe than the original sentence ; they must not interfere with their finding. *S. 54 (2).*

The Court on reassembling for revision may not hear any further evidence. *S. 54 (2) ; R.P., 52 (4).*

### *Precedents.*

#### ORDER FOR THE REASSEMBLY OF A DISTRICT COURT-MARTIAL.

With reference to.....Order No.....dated the.....day of.....the District Court-Martial of which (rank) (name and regiment of President) is President, will reassemble at.....(place) ..... on.....(date).....at.....(time).

Instructions have been issued to the President.

#### PROCEEDINGS OF REASSEMBLY.

At....., on the.....day of.....at.....o'clock, the Court reassembled by order of.....for the purpose of reconsidering their .....

*Present, the same Members as on the.....*

[Instruction.—If a Member is absent and the absence will reduce the Court below the required minimum, or if he is the President, and it appears to the Members present that such absent Member cannot attend within a reasonable time, the President, or, in his absence, the senior Member present, shall thereupon report the case to the Convening Officer.]

The letter (order or memorandum) directing the reassembly of the Court for the revision, and giving the reasons of the confirming authority for requiring a revision of the finding (finding and sentence) (or sentence) is read, marked....., signed by the President, and attached to the proceedings.

The Court having attentively considered the observations of the confirming authority, and the whole of the proceedings,

(a) do now revoke their finding and sentence, and find.....and sentence the accused to.....

or,

(b) do now revoke their sentence, and now sentence the accused, etc., etc.

or,

(c) do now respectfully adhere to their sentence (or finding and sentence).

SIGNED at....., this.....day of.....19

Judge-Advocate.

President.

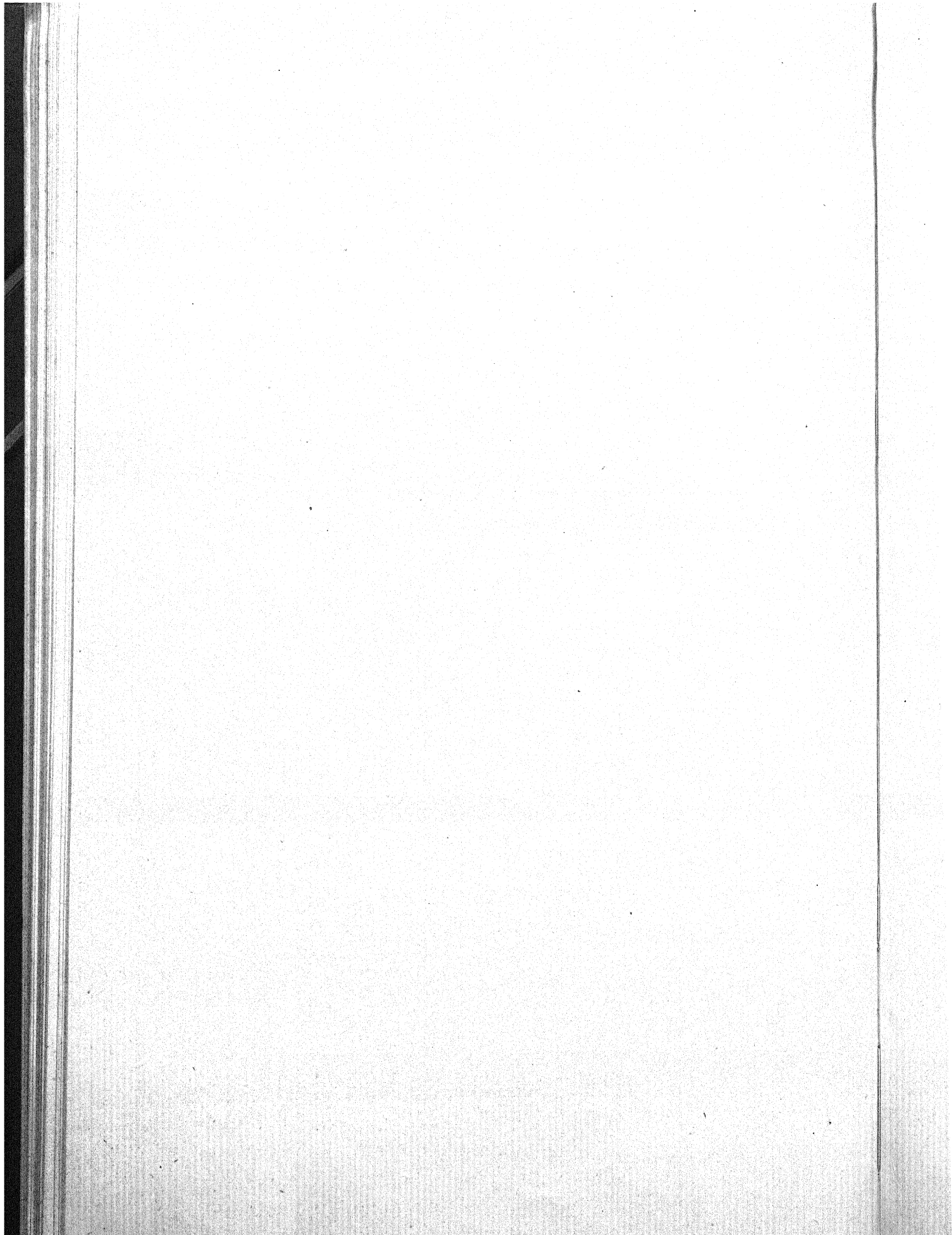


## FORMS OF COMMITMENT.

(See pages 771-786, M.M.L.)

The following forms are applicable for commitment, removal, etc., of persons sentenced to imprisonment, detention, etc. :—

A.F. C 383	Form A	Form of Order of Commitment to Prison of Military Convict sentenced in the United Kingdom to Penal Servitude.
A.F. C 384	Form B	Form of Order for Commitment to prison of Military Convict sentenced in India or a Colony, or a Foreign Country, to Penal Servitude.
A.F. C 384A	Form BB	Form of Order respecting a sentence of Penal Servitude passed for an offence committed on active service, where part of the sentence is ordered to be served in a military prison.
A.F. C 385	Form C	Form of Order for Commitment to Prison, Military or Civil (or to a Detention Barrack) of persons subject to Military Law sentenced either in or out of the United Kingdom to Imprisonment.
A.F. C 385A	Form D	Form of Order for Commitment to a Detention Barrack of persons subject to Military Law as soldiers, sentenced either in or out of the United Kingdom to Detention.
A.F. C 386	Form E	Form of Order respecting Imprisonment under sentence passed out of the United Kingdom and to be undergone in the United Kingdom.
A.F. C 386A	Form F	Form of Order respecting detention under sentence passed out of the United Kingdom and to be undergone in the United Kingdom.
A.F. C 388	Form G	Form of Commitment to Detention Barrack on award of detention by Commanding Officer.
A.F. C 389	Form H	Order for Release of Persons subject to Military Law undergoing Imprisonment.
A.F. C 389A	Form I	Order for release of persons subject to Military Law as soldiers undergoing detention.
A.F. C 390	Form J	Form of Releasing Order in case of detention under the award of Commanding Officer.
A.F. C 391	Form K	Order for delivery into military custody of a soldier undergoing imprisonment.
A.F. C 391A	Form L	Order for delivery into military custody of a soldier undergoing detention.
A.F. C 392	Form M	Order for removal of soldier undergoing imprisonment for embarkation.
A.F. C 392A	Form N	Order for removal of soldier undergoing detention for embarkation.
A.F. C 393	Form O	Order for transfer of soldier from one prison (or detention barrack) to another.
A.F. C 393A	Form P	Order for transfer of a person subject to Military Law as a soldier undergoing detention from one detention barrack to another.
A.F. C 396	Form Q (B)	Form of Order for Temporary Custody in Prison or Lock-up.
A.F. B 72	Form R	Form of Commitment to Detention Barrack for safe custody while awaiting trial by, or sentence of, Court-Martial.
A.F. B 94	Form S	Form of Releasing Order in case of Confinement in Detention Barrack for safe custody while awaiting trial by, or sentence of, Court-Martial.
A.F. O 1797	Form T	Order for the removal in Military Custody of a deserter or absentee without leave awaiting escort.



## FIELD GENERAL COURTS-MARTIAL

The object of a Field General Court-Martial is to provide for the speedy trial of offences committed abroad or on active service in cases where it is not practicable, with due regard to the interests of discipline and of the Service, to try such offences by an ordinary Court-Martial. A Field General Court-Martial can try any offence committed on active service, but where troops are not on active service it can only be convened for the trial of offences against the property or person of some inhabitant of, or resident in, the country.

If troops on board a ship (not commissioned by His Majesty) are on active service, the Officer Commanding troops can convene a Field General Court-Martial for the trial of an offender on board.

The authority to convene a Field General Court-Martial is contained in Section 49 of the Army Act.

### ARREST.

Arrest is effected in the normal manner (see pages 10 and 11).

On active service a soldier under arrest may be ordered to bear arms, to attend parades and to perform all such duties as may be required of him. *K.R. 566 (b.)*

During active service confinement is inappropriate unless the circumstances call for physical restraint, and advantage should be taken of the power to release an accused from arrest without prejudice to rearrest later. *K.R. 577.*

### REMAND FOR TRIAL BY FIELD GENERAL COURT-MARTIAL.

The accused will be remanded for trial by Field General Court-Martial by his Commanding Officer in a similar manner to that in the case of a General or District Court-Martial. (See page 40.)

## APPLICATION FOR TRIAL.

Application for trial by Field General Court-Martial should be made by forwarding to the Convening Officer the following documents :—

- (a) Summary or statement of evidence.
- (b) Proposed charges, whether in the form of a charge sheet or otherwise.
- (c) Form A.F. B 296 or certified true copy of conduct sheet (A.F. B 122).

**NOTES.**—For a Field General Court-Martial it is not essential that a Summary of Evidence should be taken; a Summary of Evidence should be taken if practicable; if impracticable, statements in writing of the witnesses in support of the charge must be taken in order to indicate to the Convening Officer and the accused the nature of the evidence that will be given by each witness. *R.P. 121.*

A formal charge sheet is not necessary. The statement of an offence may be made briefly in any language sufficient to describe or disclose an offence under the Army Act. *R.P. 108.*

A copy of the Summary of Evidence (or statement of evidence) and of the charges should be delivered to the accused at the same time as the above documents are forwarded to the Convening Officer.



## THE CONVENING OFFICER.

Legally any officer in command of troops on active service may convene a Field General Court-Martial.

NOTE.—The officer must be “in command”—not a Staff Officer. The full authority is contained in the following Rule of Procedure :—

Convening of Field  
General Court-Martial.

*R.P. 105 (A).* A Field General Court-Martial may be convened—

- (i) By any officer in command of a detachment or portion of troops in any country beyond the seas when not on active service, where complaint is made to him that an offence has been committed by any person subject to military law under his command against the property or person of any inhabitant of or resident in that country : or
- (ii) By the Commanding Officer of any corps or portion of a corps on active service, or by any officer in immediate command of a body of forces on active service, where it appears to him, on complaint or otherwise, that a person subject to military law has committed an offence.

(B) An officer in command of a detachment or portion of troops not on active service should not convene a Field General Court-Martial in His Majesty's Dominions unless he is authorized so to do by the General Officer or Brigadier commanding the forces to which the officer belongs.

(C) An officer, before convening a Field General Court-Martial for the trial of a person, shall be satisfied that it is not practicable to try the person by an ordinary Court-Martial, and—where the officer is below the rank of field officer and is not a Commanding Officer—be further satisfied that it is not practicable to delay the trial for reference to a superior officer.

General Orders of a force on active service may direct that the convening of a Field General Court-Martial shall be restricted to officers of certain ranks, or holding certain appointments. A usual direction is that Field General Courts-Martial shall only be convened by Brigade Commanders, or officers holding equivalent appointments.

## COMPOSITION OF THE COURT.

A Field General Court-Martial shall consist of not less than three officers unless the officer convening the same is of the opinion that three officers are not available, having due regard to the public service, in which case the Court-Martial may consist of two officers. *S. 49 (1) (b).*

NOTE.—When a Field General Court-Martial consists of less than three officers, the sentence shall not exceed field punishment or imprisonment. *S. 49 (1) (d).*

### PRESIDENT.

*R.P. 106 (B).* If the Convening Officer is of opinion that three other officers are not available to form the Court, he may appoint himself President of the Court ; but if he is of opinion that three other officers are available, or that although three other officers are not available he is himself by reason of his position as confirming officer or otherwise not available, he must appoint as President some other officer.

Provided that the Convening Officer—

- (i) Must not appoint as President any officer below the rank of field officer, unless he is himself below that rank, or unless in his opinion a field officer is not available ; and
- (ii) Where under the foregoing provision he has power to appoint as President an officer below the rank of field officer, must not appoint an officer below the rank of Captain, unless in his opinion a Captain is not available.

## **MEMBERS—SERVICE OF.**

*R.P. 106 (C).* The officer convening a Field General Court-Martial shall appoint or detail the officers to form the Court, and may also appoint or detail such officers as waiting members as he thinks expedient. The officers should have held commissions for not less than one year, but if any officers are available who have held commissions for not less than three years, they should be selected in preference to officers of less service.

*R.P. 106 (D).* The Provost-Marshal, an Assistant Provost-Marshal, and an officer who is prosecutor or a witness for the prosecution, must not be appointed a member of the Court, but save as aforesaid any available officers may be appointed to sit.

## **JUDGE-ADVOCATE.**

*R.P. 106 (E).* The Convening Officer, although not authorized to appoint a Judge-Advocate in the case of other Courts-Martial, may in the case of any Field General Court-Martial by order appoint a fit person to act as Judge-Advocate thereat.

## **DEFENCE OF ACCUSED.**

(a) An officer should, if the accused desires it and circumstances permit, be assigned to him to conduct his defence at a Field General Court-Martial. In cases of the gravest character the Convening Officer should, if possible, arrange for an officer with legal qualifications or special experience to be available to act as defending officer.

(b) The defending officer, or any counsel whose services the accused may secure to represent him, should be notified in sufficient time for him to give consideration to the case, and to consult with the accused.

(c) If assistance in his defence has been offered to the accused and declined, that fact will be notified to the Court and stated in the Proceedings.

(See pages 42 and 43 regarding the appointment of defending officer.)

## **ATTENDANCE OF WITNESSES**

(a) Although the attendance of witnesses at the taking of the summary may be dispensed with, at the trial the presence of every witness is essential. Documentary evidence, such as written statements of witnesses, cannot be admitted at a Court-Martial, except as specially provided (but see A.A., S. 163). The practice of not summoning witnesses because the accused has indicated his intention to plead guilty is wholly incorrect.

(b) The accused should be asked as early as possible for the names of any witnesses he may wish to call, and steps should be taken to secure their attendance.

(c) Before application is made for the attendance of a witness from a distance, care should be taken to ascertain that his evidence really is material, and in forwarding the application to superior authority, an indication should be given of the facts which that witness is expected to prove.

(d) It should be remembered that written evidence offered by the defence, as to the character of the accused, will be normally accepted; this will often obviate the necessity for the attendance of a witness.

## PROCEDURE AT THE TRIAL.

### PRELIMINARY PROCEDURE.

1. See that the Court is properly constituted and that the members have the necessary service. *R.P.* 106-107.

2. Read out the Convening Order (A.F. A 3, page 1) in the presence of the accused, prosecutors, defending officers, witnesses, etc.

3. Give each accused the right of challenging the President and Members of the Court (*R.P.* 110). If the accused challenges and the challenge is upheld, report the fact immediately to the convening authority, and if necessary adjourn the trial of that accused.

Objections to the Court should be dealt with in the manner provided by *R.P.* 25 (see page 72).

4. Swear the Court (S. 52, *R.P.* 109-111); for forms of oaths, see page 74.

5. March out the witnesses and all the accused, except the accused person or persons to be tried first. The escort for these, the prosecutor, defending officer or counsel, and the Court orderly will remain in court.

6. If an accused charged jointly with another accused applies to be tried separately, the Court must consider the application (*R.P.* 16). If there is one or more accused and they are charged separately, then they must be tried separately and not together.

7. Arraign the accused (*R.P.* 112) (see page 74) and enter the plea to each charge in column 3 of page 2 of A.F. A 3.

(a) If the accused pleads "Guilty" the provisions of *R.P.* 35 (B) and *R.P.* 37 must be complied with.

(b) A plea of "Guilty" must not be accepted in any case in which a death sentence may be awarded. *R.P.* 35 (D).

(c) Where charges are in the alternative a plea of "Guilty" cannot be accepted for more than one of the alternative charges.

(d) As a rule, unless the accused pleads "Guilty" to the more serious of alternative charges, pleas of "Not guilty" will be entered on both charges, and the trial proceeded with. After hearing the evidence the Court can decide on which charge the accused is guilty. Finding of "Guilty" and "Not guilty" should then be entered accordingly in column 4 of the schedule on page 2 of A.F. A 3.

(e) A plea of "Guilty" covers all defects in the evidence, unless it appears from the summary, or otherwise, that the accused has not in fact committed the offence charged, in which case a plea of "Not guilty" should be entered.

(f) Where an accused pleads "Guilty" to the first of two or more charges laid in the alternative, the prosecutor may withdraw the other alternative charge or charges, without requiring the accused to plead to them. *R.P.* 35 (C).

### PROCEDURE ON A PLEA OF "GUILTY."

The procedure is similar to that in the case of a District Court-Martial (see page 89).

The Summary of Evidence or Statements of Evidence should be attached to form A.F. A 3 between pages 2 and 3, together with A.F. B 296 or B 122 (if available).

### PROCEEDINGS ON A PLEA OF "NOT GUILTY."

The Proceedings of the trial on a plea of "Not Guilty" should follow the lines of that laid down for a District Court-Martial (see pages 79 *et seq.*). *R.P.* 114 and 116.



## **RECORD OF THE PROCEEDINGS.**

*R.P. 114 (B).* The Judge-Advocate, if there be one, or if there be none the President of the Court, shall take down, or cause to be taken down, a short summary of the evidence of all the witnesses at the trial, and the summary so taken down shall be attached to the Proceedings.

Provided that, if it appears to the Convening Officer that military exigencies or other circumstances prevent compliance with this provision, the trial may be carried on without any summary being taken down, but in every such case the Convening Officer shall report to superior authority in the same manner as he is required to do under the provisions of Rule 107 (C).

The record of the proceedings should be made on foolscap paper and included between pages 2 and 3 of A.F. 3.

An example of the manner in which the proceedings may be conveniently recorded is shown in the following example of the Proceedings of Field General Court-Martial.

In the case of a Field General Court-Martial, the Convening Order and the form for recording the proceedings are contained in the same form—A.F. A 3 (see opposite page).

NOTES.

- (1) Delete as applicable and set out the reasons.
- (2) Here insert the names, ranks and units of the President and Members and Waiting Members. As regards the Members and Waiting Members, the number and ranks and units to which they belong may alone be stated, or they may be mentioned by name. *R.P. 106, note 4.*
- (3) Here insert name, rank and unit of the Judge-Advocate, and legal qualifications (if any).
- (4) The order convening the Court to assemble must be signed by the Convening Officer and *not* by any other officer on his behalf.

# EXAMPLE OF PROCEEDINGS OF A FIELD GENERAL COURT-MARTIAL

Army Form A 3.

## Form for Assembly and Proceedings of Field General Court-Martial on Active Service

### PROCEEDINGS

On Active Service , this Fourteenth day **A.**  
of January, , 1941. Order  
convening  
the Court.

Whereas it appears to me, the undersigned, an officer in command of 901st Inf. Brigade, on active service, that the persons named in the annexed schedule, being subject to the Army Act, have committed the offences in the said schedule mentioned;

And whereas I am of opinion that it is not practicable that such offences should be tried by an ordinary General Court-Martial; \*~~[and that it is not practicable to delay the trial for reference to a superior qualified Officer.]~~

I hereby convene a Field General Court-Martial to try the said persons, and to consist of the Officers hereunder named. (1)

\* Omit if not applicable.

\*~~[I am unable to appoint:—~~

~~\*(1. Three Officers to form the Court.)~~

~~\*(2. A Field Officer as President.)~~

~~\*(3. Three Officers having more than one year's service.)~~

~~for the following reasons, namely:—]~~

\* The ranks, names and units of the President and Members must be inserted before the form is signed by the Convening Officer. The detailing of Members may not be delegated to Officers Commanding units.

Rank.	Name.	Regiment.
Major	A. Blank, D.S.O.	8th Royal Fusiliers
<i>Members.</i>		
Captain	B. Smith, M.C.	10th Field Regt., R.A.
Lieut.	C. Jones.	8th Field Coy., R.E.
<i>Judge Advocate.</i>		
Captain	D. Brown, Barrister-at-Law	HQR's "X" Corps

\*Signed **S. T. HOWITZER,**  
Brigadier. (1)

Commanding 901st Infantry Brigade.  
Convening Officer.

\* Must be signed personally by the Officer actually in command at the time, and all alterations in the composition of the Court to be initialled by him.



## SCHEDULE.

Number, Rank (a), Name and Unit of Accused (b)	Offence charged	* Plea	Finding, and if Convicted, Sentence (c)	How dealt with by Confirming Officer (d)
(2)	(4)	(5)	(6)	
123456 Private Thomas Atkins, 2nd Battalion Royal North Kent Regiment.	<u>Section 8(1) AA</u>  When on Active Service,  STRIKING HIS SUPERIOR OFFICER BEING IN THE EXECUTION OF HIS DUTY,  In that he, in the Field on the 1st January, 1941, when detailed for Guard Duty by No. 234567 Corporal H. Jones, 2nd Battalion Royal North Kent Regiment, struck the said Corporal in the face with his fist.	Not Guilty.	Guilty. 60 Days F.P.	Confirmed, S. T. H. Brigadier.

\* Question to be asked of accused, if he pleads "Not guilty." R.P. 36 (A).

"Do you wish to apply for an adjournment on the ground that any of the rules relating to procedure before trial have not been complied with, and that you have been prejudiced thereby, or on the ground that you have not had sufficient opportunity for preparing your defence?"

Answer (to be recorded on separate sheet if necessary):—

(Signed) S. T. Howitzer, Brigadier.

(Signed) A. Blank, Major

Commanding 901st Inf. Bde.  
Convening Officer (e)

8th Royal Fusiliers.  
President.

(a) Appointment, acting rank or acting appointment, if any, to be stated in brackets after the substantive rank.

(b) Unless unavoidable, not more than three names are to be entered on one form, and in serious cases one only.

(c) Recommendation to mercy, if any, to be inserted in this column.

(d) It is not necessary that the Confirming Officer should sign his name in this column. Initials are sufficient.

(e) Must be signed by the same officer who signs on the first page, and all alterations in the first two columns of the Schedule to be initialled by him.

### NOTES.

(1) Where an accused has elected to be tried by Court-Martial this should be shown on the Proceedings; it is convenient to insert where shown the words "Elects trial" in red ink, if applicable.

(2) *Acting and Lance Rank.*—Whenever a warrant officer, non-commissioned officer or private holding acting or lance rank is tried by Court-Martial, his permanent or temporary rank must be shown here—e.g., "corporal (acting C.S.M.)."

(3) The name of more than one accused may be inserted on the same A.F. A 8. Except in joint trials and any cases where the charges are serious—i.e., desertion, cowardice, etc.—only one accused should be shown on each sheet. Where, however, two or more accused are concerned in the same transaction, it is important that the proceedings in all their cases should be forwarded together.

(4) The example shows a charge fully set out in schedule, there being no separate charge sheet. If a separate charge sheet has been prepared (see page 51) then an entry should be made in the above schedule as follows:—

S. 8 (8) A.A.—Striking his superior officer (see charge sheet attached).  
If there is a separate charge sheet it must be initialled by the Convening Officer.

Alternative charges should be marked as "alternative" in the schedule or on the charge sheet.

(5) Here insert the "Plea."

(6) Here insert the finding on each charge—i.e., "Guilty," "Not guilty," etc. (see page 92), and sentence (see page 96). As to sentences of a Field General Court-Martial, see pages 116 and 117.

Evidence, etc., should be recorded on foolscap and inserted between pages 2 and 3 of A.F. A 3. The following is an example :—

*TRIAL of No. 123456 Private THOMAS ATKINS,  
2nd Battalion, Royal North Kent Regiment*

*PROSECUTOR :—Captain H. Johnson, 2nd Battalion, Royal North Kent Regiment.*

*DEFENDING OFFICER :—Lieut. A. Harris, Solicitor, 2nd Battalion, Royal North Kent Regiment.*

*At 0900 hours the trial commenced.*

*The names of the President and Members were read to the accused.*

*The accused was asked : “ Do you object to be tried by me, as President, or by any of the officers whose names you have heard read over ? ”*

*Answer by accused : “ No.”*

*The accused is arraigned upon the charge in the schedule.*

*The Prosecutor made an opening address.*

*He referred to the offence with which the accused was charged and outlined the evidence that he proposed to call in support of the charge.*

*First witness for the  
Prosecution.*

*No. 234567 Corporal H. Jones, 2nd Battalion, Royal North Kent Regiment, in the field, sworn states :—“ I am a Corporal of No. 7 Platoon, ‘ B ’ Company, to which the accused belongs. At 1400 hours on the 1st January, 1941, in consequence of instructions I went to the billet of Private Atkins, whom I recognized as the accused ; he was sitting on his bed with his back to me when I entered the billet. I went up to him and I said : ‘ Atkins, you are detailed for guard duties to-morrow evening.’ He stood up and turned round to me and said : ‘ I have done two guards already this week, I am going out to-morrow evening, you can go to Hell with your bloody guard, and take that.’ As he said the last words he struck me on the left jaw with his right clenched fist. I wear false teeth, he knocked the teeth out of my mouth. The teeth were not broken. The skin was not cut. It was a hard blow. Before he had time to strike a second blow, he was seized by Private Smith. I ordered him into arrest. I was in uniform and wearing the badges of rank of a Corporal. I have known the accused for six months ; I am his section commander, he knows me well.”*

*CROSS-EXAMINED :—“ The accused was sitting with his back to me when I entered the billet, he turned round when I spoke to him. He is a man of quick temper, he did not appear to be drunk ; I have known him get very bad-tempered after drinking.”*

*RE-EXAMINED :—“ When I spoke to him at first and he replied, his speech was quite clear, he seemed to be quite normal.”*

*No questions by the Court.*

*R.P. 83 (B) complied with.*

*Second witness for the  
prosecution.*

*No. 345678 Private George Smith, 2nd Battalion, Royal North Kent Regiment in the field, sworn states :—“ I was present in my billet on the 1st January, 1941. At about 1400 hours Corporal Jones entered. The accused, Private Atkins, was also there. I saw Corporal Jones go up to Private Atkins and I heard the Corporal say something about guard duty the following evening, I did not hear the exact words. I then heard the accused say to the Corporal : ‘ I have done two guards already this week, I am going out to-morrow evening, you can go to Hell with your bloody guard, and take that.’ I then saw the accused strike the Corporal on the left jaw with his right clenched fist. This blow knocked the Corporal’s teeth out of his mouth. I closed with Private Atkins. He said to me immediately afterwards : ‘ I am sorry I hit the Corporal, I lost my temper.’ ”*

*No cross-examination.*

*No questions by the Court.*

*R.P. 83 (B) complied with.*

*The Prosecution is closed.*



Evidence, etc., should be continued on foolscap.

#### DEFENCE. (1)

Question to the accused :—" Do you apply to give evidence yourself as a witness ?"

Answer :—" Yes."

Question :—" Do you wish to call in other witnesses in your defence ?"

Answer :—" Yes."

Question :—" Is he a witness as to character only ?"

Answer :—" Yes."

First witness for  
defence.

The accused, 123456 Private Thomas Atkins, 2nd Battalion, Royal North Kent Regiment, sworn states :—(2) "I had had three pints of beer before midday dinner. I had had no sleep the previous night owing to an air raid, when the Corporal came into the billet I was just going to have a rest. I felt very tired and irritable. I thought it unfair for me to be detailed for another guard duty, I had already done two that week. I had arranged to go out on the following evening with my lady friend. I lost my temper. I am very sorry."

No cross-examination.

No questions by the Court.

R.P. 83 (B) complied with.

Second witness for  
defence.

No. 567890 C.S.M. George Hardmutt, 2nd Battalion, Royal North Kent Regiment, sworn states :—" I have been C.S.M. of ' B ' Company for the past twelve months ; the accused has been in ' B ' Company all the time. This is the first time during twelve months any charge has been made against him. Normally he is a keen and willing soldier. He was present at the evacuation of Dunkirk, he was narrowly missed by an enemy bomb. Since that time he has been inclined to be irritable ; recently he has been drinking somewhat heavily."

No cross-examination.

No questions by the Court.

R.P. 83 (B) complied with.

The defence is closed.

The Prosecutor declines to address the Court.

The Defending Officer addressed the Court. He referred to the excellent character of the accused ; that he thought he was being unfairly treated ; that the amount of drink previously taken had accentuated his irritability ; that the offence was unpremeditated and the accused was sorry.

The Court closed to consider the finding.

The Court is re-opened.

Captain G. Washington, Adjutant, 2nd Battalion, Royal North Kent Regiment, sworn states :—" I produce certified true copy of Army Form B 122, marked ' A,' signed by the President and attached to the Proceedings. The form in question refers to the accused and shows no entries."

The Defending Officer, in mitigation of sentence, referred to the accused's clean record of service and asked for leniency.

The Court closed to consider the sentence.

#### NOTES.

(1) *Defence*.—It is the duty of the President to inform the accused at the close of the case for the prosecution that he can either—

(a) give evidence as a witness on oath, in which case he is liable to be cross-examined by the prosecutor or by the Court ; or

(b) make, or hand in, a statement *not* on oath, in which case he is not liable to be questioned in any way ; or

(c) say nothing.

(If he desires to give evidence on oath, but has prepared a written statement of the facts which he desires to hand in, he may do so after being sworn. He can then be cross-examined upon it.)

The President should also inform the accused that the Court will attach more weight to evidence given on oath than to a statement not on oath, which the Court cannot test for themselves by questioning.

The President should then ask the accused which course he wishes to adopt, and whether he has any witnesses to call in his defence.

(2) *Alternative Precedents*.

Accused (Number, etc.), not sworn, states.....  
or  
not sworn, hands in written statement marked.....  
or  
makes no statement.

N.B.—In each of these cases he *cannot* be cross-examined by the prosecutor or questioned by the Court ; and throughout the proceedings, except when the accused is giving evidence on oath, the Court should be careful not to ask him questions about the facts of the case.



I certify that the above Court assembled on the 16th day of B.  
January, 1941, and duly tried the persons named in the Schedule, Certificate of  
President  
as to  
proceedings  
 and that the plea, finding, and sentence in the case of each such person were as stated  
 in the third and fourth columns of that Schedule.

I also certify that

1. The members of the Court

2. The witnesses

\*~~(3. The interpreter)~~

\*~~(4. The officers under instruction)~~

\* Omit if not  
applicable.

were duly sworn.

Signed this 16th day of January 1941.

A. Blank, Major, 8th R.F.

President of the Court-Martial.

~~I certify that the terms of A.C.I. 570 of 1918 have been complied with.~~

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_.

**C.**  
Certificate in  
case of death  
sentences.

President of the Court-Martial.

I have dealt with the findings and sentences in the manner stated in the last column  
 of the Schedule, and, subject to what I have there stated, I hereby confirm the above  
 findings and sentences.

**D.**  
Confirmation.

\* To be omitted unless  
penal servitude or  
imprisonment having  
been awarded, the  
Confirming Officer  
either has no author-  
ity to commit to  
prison, or, having  
such authority, re-  
commends suspen-  
sion.

~~\*(I direct that the soldier named in the margin be not committed to prison until  
 further orders.)~~

Signed this 17th day of January, 1941.

S. T. Howitzer, Brig. Cmdg. 901st Inf. Bde.

Confirming Officer.

Promulgated and extracts taken in the case of 123456 Pte. T. Atkins, 2nd Bn. R. N. Kent Regt.

(a) (Dated) 18th January, 1941 (Signed) G. Washington, Capt. & Adj.  
2nd Bn. R. N. Kent Regt.

Promulgated and extracts taken in the case of

(Dated) \_\_\_\_\_ (Signed) \_\_\_\_\_

Promulgated and extracts taken in the case of

(Dated) \_\_\_\_\_ (Signed) \_\_\_\_\_

(a) When several cases are promulgated in one unit on the same day the Officer need only sign once.

## FINDING.

*R.P. 117 (A).* In the case of an equality of opinions on the finding, the accused will be acquitted—*i.e.*, the finding must be “Not guilty.”

The finding on each charge must be entered in column 4 of page 2 of A.F. A 3 as “Guilty,” “Not guilty,” or in the case of a special finding, or in the case of insanity, as shown on pages 92 and 95.

If the accused pleads “Guilty,” the finding of “Guilty” must be entered on A.F. A 3 in column 4 of page 2 as well as in column 3.

A special finding cannot be recorded on a plea of “Guilty.”

See pages 92 to 95 *re* “Finding.”

## HONOURABLE ACQUITTAL.

A finding of honourable acquittal is incorrect where the charge does not affect the honour of the accused. It is equally inappropriate unless the accused's conduct has been irreproachable throughout the incident and transactions of the case investigated by the Court.

## ANNOUNCEMENT OF ACQUITTAL IN OPEN COURT.

If the accused is found “Not guilty” on any one of the offences with which he is charged, the finding of “Not guilty” in respect of that charge will be announced in open Court. If he is acquitted on all the charges he will be released from custody forthwith. *R.P. 117 (B).*

## SENTENCES.

*R.P. 118.*

(A) The Court, if consisting of three or more officers, may award any sentence which a General Court-Martial can award; but if the Court pass sentence of death, the whole Court must concur.

(B) The Court, if consisting of two officers, may award any sentence authorized for the offence, not exceeding field punishment, or two years' imprisonment with hard labour.

(C) Any recommendation to mercy will be attached to the proceedings, and communicated to the accused, together with the finding and sentence.

A Field General Court-Martial may therefore award any of the following sentences :—

In the case of officers, according to the scale following :—

- (a) Death.
- (b) Penal servitude for a term not less than three years.
- (c) Imprisonment, with or without hard labour, for a term not exceeding two years.
- (d) Cashiering.
- (e) Dismissal from His Majesty's service.
- (f) Forfeiture in the prescribed manner of seniority of rank, either in the Army or in the corps to which the offender belongs, or in both; or, in the case of an officer whose promotion depends upon length of service, forfeiture of all or any part of his service for the purposes of promotion.
- (g) Severe reprimand or reprimand.
- (gg) Stoppages.

In the case of soldiers, according to the scale following :—

- (h) Death.
- (j) Penal servitude for a term not less than three years.
- (k) Imprisonment, with or without hard labour, for a term not exceeding two years.
- (kk) Detention for a term not exceeding two years.
- (l) Discharge with ignominy from His Majesty's service.
- (m) In the case of a non-commissioned officer, reduction to the ranks or to a lower grade, or forfeiture in the prescribed manner of seniority of rank.
- (mm) In the case of a non-commissioned officer, severe reprimand or reprimand.
- (n) Forfeitures, fines and stoppages.



## NOTES.

### SENTENCE.

1. One sentence should be awarded, whether the accused is found guilty of one or more charges. This sentence may, however, where authorized by A.A., S. 44, consist of more than one punishment—*e.g.*, "Reduction to the ranks and £1 stoppages," or "28 days' F.P. and 60 days' forfeiture of pay."

2. Sentence will be entered in column 4 of page 2 of A.F. A 3 below the findings. It should be entered briefly—*e.g.*, "60 days F.P.," "2 years I.H.L.," "3 years P.S.," etc.

3. The maximum punishment which can be awarded will be found laid down in the section of the Army Act under which the charge is laid. (For civil offences see Table M.M.L., pp. 130-134.) "Such less punishment" can be found by reference to A.A., S. 44.

4. To award a sentence exceeding imprisonment or field punishment a Court must consist of three or more officers [A.A., S. 49 (1) (d)].

5. In the case of a death sentence the Court must be unanimous, an entry to this effect being made on the Schedule. A.A., S. 49 (2).

Other sentences are decided by a majority, the President, if necessary, having a casting vote. A.A., S. 53 (8). R.P. 69 and notes. R.P. 119.

6. For sentence where an accused has elected trial see M.M.L., Chap. V, para. 79, page 61, and K.R. 681 (c).

7. *Imprisonment*, with or without hard labour, cannot be awarded for a term longer than two years inclusive of any previous sentence which may be current at the time.

8. *Penal servitude* cannot be awarded for a term less than three years. Maximum is for life.

9. *Field punishment* cannot be awarded for a term longer than three calendar months. It should be awarded in days.

10. *Detention and Discharge with ignominy* are not normally awarded on active service in the field.

11. Forfeiture of pay not exceeding three months may be awarded on active service, in addition to or without other punishment [A.A., S. 44 (6)]. This forfeiture of pay begins on the day of award. Consequently, if field punishment is also awarded (which involves a forfeiture of pay [A.A., S. 138 (1)]), the two forfeitures of pay will run concurrently. It follows that a sentence of forfeiture of pay, to be effective, must be awarded for a longer period than any field punishment awarded. (See note to K.R. 588.)

12. A *Fine* not exceeding £5 may be awarded, in cases of drunkenness only, either in addition to or in substitution for any other punishment. A.A., S. 19.

13. *Stoppages*.—To enable a Court-Martial to sentence a soldier to stoppages of pay, the amount of damage, etc., must be stated in the charge, and proved in evidence. A definite sum must be mentioned in the sentence. When damage or loss has been occasioned by the commission of an offence, stoppages ought generally to be awarded.

N.B.—A Court-Martial has no power to award C.B.

### WARRANT AND NON-COMMISSIONED OFFICERS.

1. Warrant and non-commissioned officers can be awarded the same punishments as private soldiers, but before being sentenced to penal servitude, imprisonment, or field punishment they should be sentenced to reduction to the ranks. A.A., S. 133 (4), and note 7 on M.M.L., p. 595.

2. They can also be sentenced to reduction to the ranks or to a lower grade, or to forfeiture of seniority, or to severe reprimand, or to reprimand. A.A., S. 44 (m) and (mm).

3. *Rank*.—In dealing with warrant and non-commissioned officers care will be taken to ascertain their temporary or permanent rank. An acting warrant or non-commissioned officer cannot be deprived of his acting rank by sentence of Court-Martial. A Court-Martial can only deal with him in his temporary or permanent rank. See notes 3 and 6 on page 595, M.M.L. Thus a private (Acting Sergeant) cannot be reduced to the rank of Acting Corporal, nor can he be reduced to the ranks. Any sentence involving loss of liberty (*i.e.*, one day's field punishment or upwards) will automatically reduce any non-commissioned officer to the ranks. Otherwise acting and lance ranks can only be dealt with by the man's C.O., but the probable loss of such rank, as a consequence of the conviction, should be taken into consideration by the Court.

### DEATH SENTENCE.

When a Court-Martial passes sentence of death, at the conclusion of the trial the President will cause to be forthwith transmitted to the accused under sealed cover A.F. A 3996, duly completed and signed by himself. The President will attach to the Proceedings a certificate, signed by himself and dated, stating that these instructions have been complied with. M.M.L., p. 762, note (b).

For sentences awarded by Field General Court-Martial in the United Kingdom see A.C.I. 1034/1940.

### CONFIRMATION AND PROMULGATION.

See pages 98 and 99.



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